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ABSTRACT

This second annual report of the Temporary State Commission on Child Welfare accounts for the progress made toward resolving the problems raised in the first annual report and summarizes the present status of the Commission's projects--completed, in process and proposed. Among topics briefly discussed are preventive services, the child welfare system, the rights of fathers of children born out of wedlock, adoption subsidy, adoption services, barriers to freeing children for adoption, sealed adoption records, juvenile delinquency, "persons in need of supervision," and judicial decisions. The four appendices include copies of the selected 1975 and 1976 legislation referred to in the report, and a table showing the status of the Temporary State Commission on Child Welfare legislation from the 1975 and 1976 legislative sessions. (CM)

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THE TEMPORARY STATE COMMISSION
ON CHILD WELFARE

SENATOR JOSEPH R. PISANI
Chairman

Empire State Plaza
Agency Bldg. #4
10th Floor
Albany, N.Y. 12223

518-474-7031

October, 1976

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF NEW YORK:

Pursuant to Chapter 1064 of the Laws of 1974, as amended by Chapter 29 of the Laws of 1975, I have the honor to transmit the Second Report of the State Commission on Child Welfare.

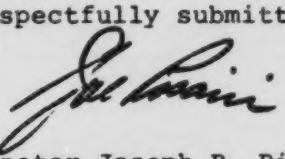
This has been a year of high accomplishment for the Commission. It was a year which saw the enactment of a major reconstitution of the Laws of the State of New York governing termination of parental rights. This legislation was the culmination of over a year of extensive research undertaken by the Commission in a research and demonstration project funded by the State Department of Social Services, pursuant to a Federal Title IV-B grant and entitled "Barriers to the Freeing of Children for Adoption".

It was also a year in which the Legislature passed legislation developed by the Commission on the subjects of rights of fathers of out-of-wedlock children and of day services programs for children and their families. Commission staff, working jointly with the Assembly Committee on Child Care, developed and the Legislature passed, major legislation creating a new accountability tool in child welfare - the State Child Care Review Service.

The Commission also wishes to acknowledge with pride the significant role played by Senator Donald M. Halperin, Chairman of its Subcommittee on Juvenile Delinquents, in the development and passage of a series of bills which responsibly deal with the problem of the serious juvenile offender and other problems within the juvenile justice system.

This Report also describes the continuing, but as yet unfinished, work of the Commission. On behalf of the Commission, I wish to acknowledge the highest cooperation and assistance which we have received from all branches of State Government and from the many public and private agencies throughout the State. It reaffirms our belief that government can be, has been and will continue to be responsive to the needs of the young people of the State who look to us for assistance.

Respectfully submitted,



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Associate Counsel	David Merritt
Secretary to the Commission	Mrs. Kathryn Godfrey
Director of Studies	Jules Kerness
Director of Program Analysis	Cornelius F. Kelly
Director of Executive Functions	Joel Barkan

RESEARCH STAFF:

Howard Yagerman
Rachel Seaver
Maureen Liccione
Judith Eimicke
Anne Nelson
Susan Peerless

ADMINISTRATIVE STAFF:

Eileen Collins
Mary Witbeck
Dorothy Lenseth

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INTRODUCTION

This Annual Report of the Temporary State Commission on Child Welfare summarizes our activities since the issuance of our first Annual Report, "The Children of the State I", which appeared in May, 1975.

In that document we endeavored to express our perceptions, after a year's collective study, of child welfare operations in New York State - especially those segments which deal with children who have been displaced from their regular family relationships for any of a variety of reasons.

The Commission does not entertain, or seek to encourage, the notion that there is any single method, or combination of methods, that offers easy solutions to the complex problems of child welfare. Just as we have successfully advocated and will continue to propose measures to encourage the adoption of homeless children and to provide services to families and children before, during and after foster care, the Commission also believes that, for many children and in many family situations, foster care (including long-term foster care) is the preferred placement. For thousands of children, indeed, there can be no rational alternative.

Our first report contained recommendations of two kinds:

1. Those broadly structural in nature, such as our emphasis on the need for accountability, for coordination in the delivery of services, our advocacy of preventive services (including day services) as an alternative (where feasible) to foster care or

to the unnecessary prolongation or repetition of foster care, and the recodification of our scattered statutes dealing with child welfare.

2. Those recommendations dealing with substantive revisions and refinements of already existing statutes, mechanisms and practices which were not of a structural nature.

The present report, "The Children of the State II", includes, as any sequel must, an account of the progress which the Commission has made toward resolving the problems raised in the previous report. This account necessarily includes, for the reader's better orientation, some description of the child welfare apparatus as it was when we found it, as it is with the enactment of our 1975 and 1976 proposals, and as we hope it will be when our deliberations and the changes which will flow from them have been completed.

The Commission is pleased to be able to report that substantial progress has already been made toward the accomplishment of those tasks which form our legislative mandate. We are deeply conscious that, without the generous assistance of the agencies and individuals whom we have called upon for help, as well as the indispensable cooperation of a Legislature and an Executive whose ready recognition of the need for change in our field of action deserves the highest praise, this progress would have been impossible.

We must also mention additional sources of assistance, without whose aid much that has been accomplished during the last two years would have been impossible.

One is the Commission's own professional staff which has imaginatively and industriously applied its collective intelligence and broad experience to the complex and difficult problems which our subject presents.

Particular acknowledgement must also be made of the substantial assistance given to the Commission by Shad Polier, Esq. who, before his much-lamented passing in June of this year, devoted many weeks of service to the Commission's needs. We are particularly grateful for his invaluable assistance in the development of our legislation removing barriers to the freeing of children for adoption. The late Mr. Polier's efforts on our behalf, and on behalf of the children of New York State, were, of course, compensated only by those intangible rewards of public service well performed which animated him to give of himself for many good causes throughout his long and outstanding public career. A Resolution expressing the condolences and affection of the Commission to Mr. Polier's family is included as an appendix to this Report.

Within the realm of structures, the Commission has taken important steps toward each of the goals mentioned above, but this progress represents only a partial achievement of our ultimate objectives. The creation of the State Child Care Review Service by Chapter 668 of the Laws of 1976 will fill a desperate need for timely access to reliable information regarding the progress of individual children within the child care system as well as the essential technological base for the study of trends and developments within the field. Without the existence of a computerized management assistance system, an essential precondition for true accountability and meaningful coordination would be lacking.

With the Commission's full support, the Legislature appropriated the sum of $3.75 million for preventive services on an equal matching basis with local agencies in 1975 (the State's first general appropriation in this vital area other than demonstration projects) and, by Chapter 703 of the Laws of 1975, repealed a section

of law which had previously forbidden making money available for this purpose in the absence of a federal contribution. This financial commitment (made again this year) is the largest sum ever authorized for preventive services purposes in New York State. At the 1976 Session of the Legislature, the Commission's strong recommendation for the enactment of legislation providing for establishment, licensure and operation of day services programs was also adopted (Chapter 906).

While the Commission has been making significant progress toward its objectives in the broad structural areas mentioned above, sweeping reforms and refinements have also been achieved, at our initiative, in existing statutes and practices. As a result of these activities, we expect a substantial improvement in the implementation of existing child welfare policies by the courts and by child care agencies. These actions also represent major enlargements of the rights of children, families, foster parents and present as well as prospective adoptive parents, and important clarifications of the options and obligations of child care agencies, social services departments, attorneys and the courts. The results which we expect to follow from these enactments will include earlier and more effective reviews of the status and progress of children in care, the removal of barriers to the freeing of children for adoption, greater availability of appropriate resources for solving the problems of children and their families and stronger efforts to promote the adoption of eligible children.

Our discussion of the child welfare situation in our 1975 Report set forth the view that child care in New York State, considered as a whole, is without the coherence and conceptual unity that marks an effective system. Rather, we found that it consisted

essentially of a poorly coordinated array of entities, public and private, operating under laws and public policies which had been created in response to particular needs and occasionally perceived emergencies but without a clear overview of child welfare problems as a whole. Our child welfare apparatus, in short, is seen as a collection of improvisations - sometimes inspired ones, it is true, but improvisations nevertheless.

The Commission sees as its major responsibility the formulation of proposals which will impose order through the creation of a system incorporating these often admirable, but isolated, elements into a larger, better coordinated whole.

Before devoting the bulk of our limited resources to this larger task, the Commission clearly perceived an even more urgent need to develop and propose a variety of measures which would make possible the better functioning of those elements of the child care system which are already in place throughout the State of New York.

If one were to chart the flow of children through the child care system at the present time, one would find the following common elements:

1. Intake and selection of a treatment plan;
2. The provision of services to the child and/or the child's family whether in or out of the home setting;
3. Discharge (whether to the child's own home, to an adoptive home or when the child ceases to be a ward of the state).

The thrust of the legislation which the Commission has, thus far, proposed has been toward:

1. The broadening and strengthening of treatment options - mainly through the provision of varied services to the children and their families;

2. Assuring, through strengthening the oversight of the Family Court and establishing convenient and effective management assistance systems, that both internal and external accountability will be markedly improved during the provision of services;

3. Improving, through revisions of both the administrative and legal processes involved, the resolution of issues of child custody and providing greater impetus toward the quest for suitable adoptive homes for the many children in care who become available for adoption as a result of these reforms; and

4. Protecting the constitutional and legal rights of all parties in the child care process.

In each of these areas, the Commission is pleased to note that it has been able to achieve substantial results and, in some of them, that progress has reached such a point that further revisions of the laws recently passed at our recommendation would be inappropriate until such time as experience has demonstrated a need.

The Commission's mandate has also included consideration of substantive issues surrounding the juvenile offender. In this area we are pleased to note that our resolution advocating the deinstitutionalization of status offenders, which was communicated to the Governor and the Legislature on March 1, 1976, has now been implemented by Chapter 515 of the Laws of 1976. With respect to juvenile delinquency problems, the Commission notes the enactment of the Juvenile Justice Reform Act of 1976, Chapter 878, which in some respects incorporates the provisions of other bills which had been introduced at the recommendation of the Commission.

In the sections of this report that follow the present status of our projects - completed, in process and proposed - is set forth in greater detail.

The Commission wishes to acknowledge the generosity and helpfulness of the Edna McConnell Clark Foundation for the financial support noted elsewhere in the appropriate sections of this report which has greatly assisted a number of our projects.

We also wish to record our obligation to the Edwin Gould Foundation for, among other things, its assistance in arranging the Commission's field trip last January to the Ecole de Psychoeducation of the University of Montreal where the great success of Dr. Jeannine Guindon and her fellow psychoeducateurs in the treatment and rehabilitation of troubled youngsters, following the standards of their unique profession, was found worthy both of admiration and emulation. We are pleased to note that the Cornell Medical College has announced that it is beginning the first American professional program in this new specialty.

CHILD WELFARE SYSTEM: COORDINATION AND ACCOUNTABILITY

The central finding of this Commission's 1975 Report, "The Children of the State I", was that the various elements which make up the child welfare apparatus in New York State did not constitute a "system" as that word is commonly understood.

We stated that "the entire system manifests a lack of comprehensive coordination and meaningful accountability" and tha its orientation was "almost entirely directed toward the retrieva of disasters rather than their prevention" in the child welfare sphere.

Because of this basic defect, we said, our performance as a society in those areas of child welfare to which our legislative mandate extends was "inadequate and unacceptable".

More than a year of intensive study has passed since we published that preliminary verdict, and nothing has been observed that would lead us to modify it.

While there was no lack of examples to support our thesis, we selected the foster care situation as the focus of our criticism. In doing so, we endeavored to make clear that foster care per se was a vital service for many children and families - a service which, in many thousands of cases, was imperatively necessary and which, on the whole, was no more subject to criticism of its performance than any other category of service.

We selected foster care as a subject because of its scale (some fifty thousand cases, at any one time, in New York State), its cost (approaching 350 million dollars annually), and the feasibility, in many cases, of proven, less drastic and less costly

alternatives in the form of preventive services.

Services supplied to children and their families before, during, and after foster care, we held, would serve to reduce the number of entries into the foster care system, shorten the length of foster care stays, and reduce the instances of repetition of foster care for those children who had returned to their family homes.

If this belief in the need for a dramatic expansion in the availability of preventive services to children and families and in the reality of the savings (both human and fiscal) that might be achieved through their use had only been the theory of one Commission, then the attitude of indifference that has been displayed by so many local social services departments and agencies would have been less disturbing. But our opinion was not unique, and it has since been reaffirmed very forcefully by authoritative studies and by legislation and statements of policy from the highest levels of State government.

Our conclusions about the efficacy of preventive services found overwhelming support in a study carried out by the Child Welfare League of America, Inc., in March 1976: "A SECOND CHANCE FOR FAMILIES: Evaluation of a Program to Reduce Foster Care", under the auspices of the State Department of Social Services. The results of this study are summarized in the "Preventive Services" section of this Report.

It was also confirmed by a study undertaken by the State Board of Social Welfare, in conjunction with the New School for Social Research, entitled "Foster Care Needs and Alternatives to Placement: A Projection For 1975-1985", which found that many

children placed outside their homes could have stayed home, or could have returned home at an earlier time with a better likelihood of remaining there, if appropriate supportive services has been available.

The Governor's Message to the Legislature on Children, delivered on April 30, 1976, also expressed the conviction that:

> "Preventive services should be a means of changing program priorities and the existing pattern of service expenditures, rather than just a new addition to the children's services area. Indeed, dollars spent on these services can save money over more expensive, but unnecessary, residential care for some children."

As noted above, the Legislature, by this time, had already clearly expressed its concurrence with these views by appropriating, in 1975, the sum of $3,750,000 for preventive services, on a matching funds basis, and by removing the previous legal requirement that intensive family casework services might only be made available when federal funds for the purpose were also forthcoming.

With the field thus cleared for a significant expansion of preventive services during State Fiscal 1975-76, what was the result?

There were minimal results. Indeed, $2.9 million, or more than three-fourths of the $3.75 million in State matching funds, went unspent. Paradoxically, the reason most commonly advanced for this remarkable occurrence was a lack of matching local funds. In other words, there was not enough local money left over from foster care and other needs to keep children out of foster care initially, or to shorten their stay, or to prevent their return. The money needed to save money was lacking!

The purpose of this narrative is not primarily to reemphasize the well-known views of the Commission on the subject of diversifying

and promoting the provision of services to children and families at risk, but to underscore the absence of planning and coordination in the child welfare system and its tendency to follow familiar and well-trodden paths, even when proven alternatives are available.

The Commission finds that the promotion of needed change in the child welfare system, as well as the establishment of coordination and accountability in the effective delivery of existing services of all kinds, is seriously obstructed by the lack of cooperation between State agencies themselves, between State agencies and their local government counterparts, and between local agencies, both public and private. Lines of communication (to say nothing of lines of authority) are ineffective - both vertically and horizontally - and the result, all too often, is chaos. The custom is for each department and agency to see itself as a jealous sovereignty, resisting the encroachments of alien authority.

One illustration, among many, of this tendency among State agencies can be found in a recent occurrence.

The State agency with primary responsibility for funding and supervising local children's service programs in New York State is the Department of Social Services. Further, the State Constitution has vested in the State Board of Social Welfare major responsibility for visitation and inspection of children's institutions in New York State creating, in effect, since the 1971 legislative separation of the Board from the Department of Social Services, a second State supervisory body over children's services. While ordinarily it might be expected that the Board and the Department would exercise complementary responsibilities, current practice reveals a confusion in both

agencies over the appropriate role of each. An example of this confusion was action in recent months by each agency promulgating separate,overlapping sets of standards for foster care administration in New York State. This situation demonstrates a wasteful competitive rivalry at the State level which can only serve to confuse and confound local providers of care for children.

The Commission recommends that any ambiguities in our present laws and practices, which may lend apparent justification to such bureaucratic competition, be speedily corrected.

To assist it in its exploration of the fundamental problems of coordination and accountability, as they are perceived at the highest levels of the State departments and agencies involved, the Commission met in executive session during the Fall of 1975 with the following State officials: the then Commissioner of Social Services, Mr.Stephen Berger; Commissioner of Mental Hygiene, Dr. Lawrence C. Kolb; the State Board of Social Welfare; Director of the Division for Youth, Mr. Peter Edelman; the State Board of Regents; and a delegation of New York City Family Court Judges, headed by Judge Joseph Williams.

At each of these meetings, in addition to discussions of substantive issues affecting each agency, the Commission members raised two identical questions:

1. How can we prevent fragmentation of services and achieve coordinated planning and implementation where different departments each have a piece of responsibility for child welfare?

2. What kind of coordinated budgeting could be applied in order to overcome fragmentation, duplication and over-or-under utilization of available funds?

The State officials acknowledged the seriousness of the problems raised by these questions and noted that each agency was involved in some measure of activity to improve child welfare system performance. However, following these meetings and in extended deliberations on this subject, the Commission concluded that despite individual agency efforts, New York's current organizational structure for the delivery and supervision of children's services does not lend itself to definitive solutions at the departmental level.

An example of the problem of the lack of coordination of children's services is demonstrated by the inability of agencies responsible for the care of children effectively to monitor the status of children in their care or of the plans made for them and their families. At the risk of belaboring the obvious, we might observe that it is difficult to coordinate or be accountable for the care of children when even the most elementary data concerning their location, status, and progress in treatment (if any) are often unknown. Without such indicators, child care and supervising agencies or, for that matter, State policy makers,can only act in an information vacuum.

The Commission drew the conclusion that, before meaningful progress could be made toward greater accountability, it would be necessary to establish a system that would provide a convenient, prompt and reliable source of such data, individual and aggregate.

With funding made available by the Edna McConnell Clark Foundation, Commission staff reviewed systems efforts in New York (Child Welfare Information Services, Inc. which provides data on children in foster care in New York City) and other states.

Commission staff, working jointly with the Assembly Committee on Child Care, then undertook the development of legislation to provide for the establishment of a management assistance system called the State Child Care Review Service. In developing this legislation, the Commission and Assembly Child Care Committee benefitted from the close cooperation of the State Department of Social Services, as well as the State Division for Youth and Department of Mental Hygiene, and the legislative fiscal committees.

The product of those efforts - Senate bill 10375-A (introduced in the Senate by Senators Pisani and Halperin), Assembly bill 12850-A (Committee on Rules at the request of Assemblyman Gottfried)-became Chapter 668 of the Laws of 1976.

The new Child Care Review Service will embrace data on children who are in the care of authorized agencies, the State Department of Mental Hygiene or the State Division for Youth or for whom an application for such care is pending.

The Service will be implemented in stages, beginning with children in foster care and followed by children for whom foster care applications are pending, and proceeding next to in-care and in-process cases under the jurisdiction of the State Division for Youth or Department of Mental Hygiene.

The purpose of the Service is manifold. It will be designed and operated to effectuate the goals of: case planning; case management and supervision by child care agencies; supervision and evaluation by State agencies of child care agency performance; planning and policy-making by State agencies, the Governor and the Legislature; meeting judicial review requirements of State law; reducing the need for manual preparation of forms; and meeting federal Social Security Act reporting requirements.

Chapter 668 invests the State Department of Social Services with responsibility for establishing the Child Care Review Service. Significantly, under the statute, the Department is required to establish an interdepartmental advisory committee to assist in the establishment and operation of the Service. Membership on the committee will include representatives of State and local agencies responsible for the provision or supervision of child care programs, as well as the State Office of Court Administration and other organizations concerned with the rights and interests of children.

The Commission believes that this advisory committee can be a significant force in promoting inter-agency coordination of systems development efforts and, ultimately, of larger management problems.

Yet, experience with previous information systems compels us to note that the mere enactment of a statute by the Legislature and the Governor, the cooperation of a State department, and the availability of the necessary "hardware" and "software"are virtually meaningless, in terms of improved accountability and performance, unless the will to use it efficiently and creatively has penetrated the consciousness of the bureaucracy.

To sum up the status of the child welfare system in New York State at the present time, in terms of coordination and accountability, is to recite a litany of shortcomings. For purposes of illustration, a few examples will suffice.

1. There is scarcely a semblance of involvement by the State Education Department in the task of guaranteeing to each child, who is in the care of an institution under the jurisdiction of an agency other than the Department of Education, his or

her right to a free, public education. Such an education is, instead, viewed as the responsibility of the institution or department in whose care the child is placed. The educational standards and teacher selection criteria of these departments are often meaningless in practice. (Negotiations have commenced under auspices of the Commission between the State Education Department and the Division for Youth to bring BOCES services to children who are under the jurisdiction of the Division for Youth.)

2. The responsibility of the Department of Mental Hygiene for the treatment of emotional or mental disorders of young inmates of institutions operated by the Division for Youth has not been clearly defined. Children who have been placed in Division for Youth facilities are either regarded by the Department of Mental Hygiene as beyond its jurisdiction, or as being within its jurisdiction only to the extent that the children may be briefly admitted to its facilities for chemotherapy. In effect, there is a disconcerting absence of standards governing admission of children, directly or by transfer, to facilities of the State Department of Mental Hygiene, or of their eligibility for the services of that Department while in facilities under the jurisdiction of other agencies. A hopeful, albeit limited response to this complex problem may be found in progress at the Bronx Psychiatric Center.

3. Comprehensive legislation, including the Commission's far-reaching 1976 legislation on the freeing of children for adoption, was enacted in recent years which was intended to yield substantial results in providing permanence for greater numbers of children through adoption. Furthermore, the Commission is currently engaged in extensive

research to develop approaches and incentives for the adoption of those children who are, or will be, legally free for adoption. However, it is impossible to ignore the fact that State government has, with honorable exceptions, been slow (whether from lack of motivation, direction or resources) in promulgating regulations to implement these legislative directives and in taking action to enforce them. Furthermore, local governments have demonstrated a similar lack of enthusiasm and unwillingness, particularly in their reluctance to allocate resources for these objectives.

4. Just as the appropriate agencies have traditionally responded lethargically to legislative and administrative directives for the freeing, where appropriate, of foster children for adoption and for their placement in adoptive homes, they have been equally lax in efforts to rehabilitate and otherwise provide necessary services to the families of children who are in foster care to facilitate, when possible, the return of the child to his home. Placing such laxity in historical perspective, it must be noted that the agencies manifested little, if any, planning efforts on behalf of the child until faced with the reality of periodic Family Court review of the status of children in foster care.

5. New York's child care system has little effective capacity to appropriately diagnose the problems and needs of children entering the system. Consequently, children too often are inappropriately placed. In a 1975 report prepared by the State Board of Social Welfare entitled "Foster Care Needs and Alternatives to Placement" and cited above (the "Bernstein Report") it was noted that more than half the children covered by the study were inappropriately placed upon their initial entry into foster care.

Although the Report notes that there was some improvement, during the period under study,in subsequent placements of these children ("only" 42.8 per cent were inappropriately placed as of October 1974) the Commission observes that the recommendations stemming from the Bernstein Report and intending to remedy the inadequacies revealed by it, have not been implemented by the State to any significant degree.

6. The descriptive label which is attached to a child's problem at the time of the child's entry into the system continues to be decisive in determining the type of treatment which the child will receive (e.g., juvenile delinquent, person in need of supervision, neglected, truant, educationally disadvantaged, emotionally disturbed). Unfortunately, the manner in which a child enters New York's child welfare system and acquires this determinative label is a matter of chance rather than direction, particularly with respect to a child with multiple problems, so much so that two children with identical problems may be placed in entirely different treatment tracks. Once labeled, the child will most likely remain in his original narrow treatment track because of the absence of necessary linkages among agencies which would enable the provision of varied services to the child by more than one agency at the same time.

What we are dealing with is an intake and treatment lottery produced by the absence of clear uniform standards governing children in need of care or services.

Accountability is a word with many dimensions. When using it with respect to children's services, we mean that those responsible for directly providing or arranging for the provision of services are meaningfully answerable for the quality, quantity and cost effectiveness of those services.

To achieve accountability means,at the very least, that treatment plans must be wisely chosen, fully implemented, adequately supervised and regularly reviewed in the light of the objectives that are being sought and the evolving needs of the child under treatment.

Accountability in both the public and voluntary sectors of the child care system requires tools like the State Child Care Review Service; the establishment of uniform criteria for performance which readily lend themselves to assessment by supervisors (including more personal on-site inspection); and, when acceptable performance is not forthcoming, the judicious and firm invocation of such sanctions as the withholding of State aid, decertification, and revocation of licenses (which, be it noted, are already at hand in the laws of the State of New York).

Furthermore, our reimbursement formulas often are not structured to provide incentives for the achievement of meaningful program accountability. Instead, they seem designed to deal with the consequences of disaster, rather than its prevention. For example, we seek to reduce foster care caseloads and encourage the finding of permanent homes for children long in foster care by, (a) providing preventive services to children and their families at early stages and; (b) by finding permanent homes for foster children through adoption. Yet, despite these policy intentions, we have made it not only fiscally desirable, but advantageous, for local agencies to maintain children in foster care. To expect all agencies zealously to pursue against all obstacles a policy which threatens their economic welfare is to place too heavy a burden on human nature.

The Commission has agreed upon a schedule for the resolution of those organizational questions which we have identified as crucial to the settlement of issues of coordination and accountability.

A series of public hearings and executive sessions, ending in December 1976, is being held. Commission members and staff are intensively engaged in studies of the problems involved.

The Commission has divided its target areas on the general subject of coordination and accountability into three major concerns:

1. The need to structure duties and relationships between and among State and local agencies, public and private, so as to clarify their respective functions and eliminate duplications, gaps and overlaps.

2. The need to develop common standards for the nature and quality of care given to children in order to eliminate inappropriate and inconsistent intake and referral for care and delivery of service.

3. The need to restructure reimbursement and funding mechanisms in order to further the objectives of providing a general range of services focused on the entire family,rather than only the child, which will preserve and strengthen family relationships.

It is our intention to report to the Governor and the Legislature our structural recommendations, along with proposed implementing legislation, by April 1, 1977.

Intake process problems will be formally considered by the full Commission beginning January 1, 1977, and appropriate recommendations will be made by the end of 1977. Our recommendations dealing with the fiscal ramifications of the subject will be prepared between July 1, 1977 and April 1, 1978.

Since it is clear that each of the three areas impacts considerably on the others, the time periods assigned for the respective studies by the Commission have been deliberately staggered.

"BARRIERS TO THE FREEING OF CHILDREN FOR ADOPTION"
(Title IV-B, Research and Demonstration Project)

In March, 1976, the Commission completed more than a year of intensive research conducted for the State Department of Social Services in a Title IV-B (U.S. Social Security Act) funded project entitled "Barriers to the Freeing of Children for Adoption". A comprehensive report, containing the Commission's findings and recommendations was submitted to the Department and is available to the public upon request to the Commission. This report led to the enactment at the Commission's request of Chapter 666 of the Laws of 1976. A synopsis of that report and findings follows.

Synopsis of the Problem

According to the State Department of Social Services, on December 31, 1973, a total of 48,798 children were in foster care in New York State; 28,434 in New York City; 20,364 in the rest of the State. Those of them for whom permanent family situations should, but have not been, achieved were the subject of this study.

Since 1959 New York State has enacted a series of laws recognizing and endeavoring to satisfy the need and the right of every child to a permanent family relationship. The Commission recognizes, however, that, for some children, continuation in foster care for an extended period of time is a necessity, either because of their treatment needs or their actual life situation. But because there are many children in public care who cannot be returned to their natural parents and for whom continued foster care serves no long-term purpose, it was recognized that freeing

them for adoption and securing adoptive placements were the appropriate objectives of public policy. To this end laws were enacted:

1. to terminate the relationship of a child to a parent who does not assume parental responsibility and will not voluntarily relinquish the child;

2. to require the court to review periodically the status of children in public foster care and the agency's plans for achieving permanency for them;

3. to increase opportunities for adoption of all eligible children, including the older and handicapped child.

Before adoptive parents can be provided for a child who cannot be returned to his own home and who should not remain in foster care, the rights of his natural parents must be severed. Only than is the child eligible ("free") for adoption. Since 1959, the major grounds for terminating parental rights have been "abandonment" and "permanent neglect". ("Mental illness" of a parent became a ground in 1973; parental "mental retardation" in 1975). These laws allow the child care agency to initiate action to free the child for adoption. Because of the great number of children who remain in foster care in New York State year after year, a need was recognized for the Family Court to play a role in freeing the child from this seemingly interminable status and assist in finding a permanent home either by freeing and placing the child for adoption or by securing his return to his own home. In 1971 the Pisani Review Law (Social Services Law, §392) was enacted to monitor activities of child care agencies and to permit the Court (as one of various options) to order the child's agency to institute proceedings to terminate parental rights. Still, relatively few children were freed for adoption. While the passage of §392 resulted in greater judicial activity, fewer than 1,000

children throughout New York State were freed for adoption as a result of permanent neglect or abandonment proceedings from July 1, 1973 through June 30, 1974, according to the May 1975 Report, "Foster Care For Children", by the Legislative Commission on Expenditure Review.

It became evident that something was wrong with the laws or with their interpretation or implementation, or both.

The Major Objective of the Project

The Commission in this project addressed itself primarily to the statutes terminating parental rights and to their implementation. The purpose of this study on "Barriers to the Freeing of Children for Adoption" was to determine why the laws and administrative machinery had proven inadequate and to recommend remedial action.

Specifically, the project sought:

1. to isolate the problems which were inherent in the laws and to recommend remedial legislation;

2. to pinpoint the obstacles within the Court system, to confer with the Office of Court Administration regarding them and to submit appropriate recommendations;

3. to focus on problems for achieving permanency for children by means of termination of parental rights and adoptive placement as described by county departments of social services; and

4. to convey the agencies' concerns and recommend appropriate improvements.

The Project's Approach

To assist it, the Commission involved in its inquiry all of those elements who are parties to the administration and implementation of the laws. Family Court judges, Surrogates, administrative, supervisory and casework staffs in public and private

authorized agencies, and attorneys representing agencies, parents, and children were asked to define the problems they had experienced and to recommend legislative and administrative remedies.

While the urgency of the problem demanded prompt conclusions, our study was intensive and thorough. It was practical rather than theoretical, based on grass-roots experience in freeing children for adoption and, to a lesser degree, in adoptive placement, at all levels. The material was necessarily subjective because it was derived from the participants' experience in making decisions about children. The study was reinforced, however, by objective data. The essential information was gathered from seven public and forty-one voluntary child care agencies. It was a guide to action rather than a search for statistics per se.

One major effort was to encourage the participants to think about the underlying causes of the obstacles to freeing children for adoption - whether they be in the law, or in bureaucratic procedures, i.e., whether the problems were legal, philosophical or organizational.

Techniques of the Project

Seven social services districts were selected for the study: the Counties of Erie, Monroe, Onondaga, Suffolk, Westchester and Chemung, and New York City. These districts include major urban counties and suburban communities of the State and give representation to smaller community problems. The counties selected had 36,963 children in foster care at the end of 1973 (75 per cent of all children in foster care in New York State). For purposes of statistical comparison, the base population for the study was 24,687, which represents the children in foster family homes and agency-

operated boarding homes in 1973 in the districts surveyed. Thus, the children studied were those on whose behalf agency efforts toward terminating parental rights were primarily being made.

The participation and cooperation of the Office of Court Administration and of the State Department of Social Services was obtained in order to promote the cooperation of their constituencies as well as to encourage their consideration of the recommendations that would result from the study by assuring that it would be relevant to their experience and their concerns.

The staff of the "Barriers" project made numerous personal visits to seven local departments of social services, as well as sixteen child care agencies in New York City. The New York City voluntary agencies were representative of the larger child care community in terms of size, religious affiliation, degree of activity in terminating parental rights, and other significant factors. In each social services district, meetings were convened with the key individuals responsible for making decisions for children in public care, Family Court judges, administrative, supervisory, legal and casework staffs of the public departments of social services (and child care agencies in New York City), lawyers from the agencies and those representing parents or children, (e.g., legal aid societies and neighborhood legal services).

In assembling its data, the study made use of a data collection form, questionnaires and discussion groups. Questionnaires, agendas and issue papers (sent in advance) provided the basis for group discussions. The questions in the three outlines for interviews (Family Court judges, agency supervisors, caseworkers) were developed from interviews with recognized authorities on New York

State's adoption laws, and on child welfare agency practices.

Included among those who participated were forty-nine Family Court judges from six counties and the City of New York, about 200 administrators, supervisors and caseworkers from seven public departments of social services and sixteen New York City voluntary agencies, twelve county attorneys, thirty New York City child welfare attorneys and sixteen New York City attorneys representing natural parents and/or children.

Organization of the Report and Summary of Recommendations

The Commission's report was divided into three major sections: Part One, titled "The Legal Basis for Termination of Parental Rights", discussed the current statutory framework of parental rights, presented a historical perspective on the development of that body of State law, set forth the major problems and issues raised, and presented the Commission's recommendations and rationale for legislative change.

In essence, the Commission recommended a fundamental recodification of virtually all grounds for termination of parental rights for children in the care of authorized agencies, in a single statute (a proposed §384-b of the Social Services Law). This proposal incorporated, for the first time, a statement of legislative findings and intent to provide clear evidence to the Courts of the Legislature's awareness of the need for procedures to free children for adoption.

The proposed termination statute retained separate grounds for termination of parental rights (abandonment and permanent neglect) but clarified the distinctions between such grounds as well as crucial concepts (such as the phrases "contact" and "plan" under the Permanent Neglect Law).

With respect to Domestic Relations Law provisions governing required consents to adoption, anachronistic and antiquated provisions were deleted, appropriate changes conforming to the new proposed termination statute were made and a new appropriate definition of and criteria for dispensing with adoption consents were added as they will especially apply to independent or private placement adoptions.

The Commission's bill assisted attorneys and judges by setting forth procedural guidelines to be followed under the new termination statute and,with respect to judicial review of children in foster care, the proposed statute established standards to guide the court in determining whether to direct that proceedings be initiated to free children for adoption.

The substance of the Commission's comprehensive statutory recommendations represented a unified approach and solution to highly complex problems and issues which constitute barriers to achieving permanency for children.

Part Two of the Commission's report, titled "The Courts", discussed jurisdictional and administrative problems encountered within the judicial system, in administration of termination and foster care review statutes, as perceived by those consulted during the project, and presented Commission recommendations to the State Department of Social Services and the Office of Court Administration.

Part Three, titled "The Role of the Agency", detailed major concerns of social services personnel, attorneys and judicial personnel and presented Commission recommendations for administrative action, including recommendations for the development of appropriate training programs to assist caseworkers in carrying out their responsibilities in the process of terminating parental rights.

(As a follow-up to this recommendation, the Commission has submitted a Title IV-B grant proposal to the State Department of Social Services to develop an "Adoption Manual").

Following the body of the report, five Appendices presented: a draft of proposed legislation (Appendix I); statistical data, including a brief summary analysis (Appendix II); a report prepared for the Commission under this project by Dr. Trudy Bradley Festinger titled"Children in Foster Care: The Impact of Review by the Family Court" (Appendix III); survey forms used during the project and a listing of New York City voluntary agencies responding to the project surveys (Appendix IV); and correspondence received from the Executive Committee of the State's Surrogate's Court Association expressing its position on questions of expansion of the jurisdiction of Surrogates over matters of termination of parental rights (Appendix V).

In offering its recommendations for statutory and administrative changes, the Commission was well aware that it was not proposing definitive solutions for all child welfare problems.

The Commission wishes to repeat that its zeal to promote the adoption of children is limited to those for whom return to their natural families is no longer feasible. We recognize that, in many cases, foster care is the only possible course of action. As long as there is a realistic likelihood of a child's eventual return to his natural family, this option, accompanied by appropriate treatment of the child and his family, must be sustained and strengthened.

Once a child is legally freed for adoption, extensive efforts must be made by child care agencies to facilitate adoptive placement. Problems in and obstacles to adoptive placement,

(subjects beyond the scope of this study) are Commission projects this year under a grant from the Edna McConnell Clark Foundation.

The statutory recommendations offered in the report were incorporated in a bill, S.8850, A.11310, introduced at the Commission's request by Senators Pisani, Dunne and Halperin and Assemblymen Gottfried and Passannante. Public hearings were held on the bill by the Commission, in conjunction with the Assembly Standing Committee on Child Care, in Albany on April 8 and 9, 1976. At that time the views of concerned public and voluntary child care agencies, citizens and legal rights groups, judicial agencies and other interested parties were presented. The bill was subsequently amended to reflect a number of useful criticisms made during the course of the hearings and other discussions of the bill. An explanation of these amendments prepared by the staff of the Commission is available upon request. The bill passed the Legislature and was signed into law by the Governor as Chapter 666 of the Laws of 1976. The Commission is unabashedly proud of this legislation which constitutes not only an overdue recodification but a substantial reconstruction of the previous inadequate, and uncoordinated State law on the subject of termination of parental rights and related statutory provisions. We believe that it will materially increase the likelihood that thousands of children now and hereafter in substitute care will achieve permanent, wholesome family ties.

The Commission is keenly aware of its obligation to the many individuals and organizations without whose support the "Barriers" project could not have achieved its objectives.

THE RIGHTS OF FATHERS OF CHILDREN BORN OUT-OF-WEDLOCK

Serious questions have been raised, as to the rights of the fathers of children born out-of-wedlock to have a voice in the various proceedings affecting the status and future of their offspring, by the U.S. Supreme Court decision in Stanley v. Illinois, 905 U.S. 645, and, more recently the New York Court of Appeals decision in Orsini V. Blasi, 36 N.Y.2d 568, appeal dismissed by the U.S. Supreme Court "for want of a substantial federal question", 96 S. Ct. 765 (1976).

These questions have created substantial delays in initiating proceedings to free children for adoption in that questions have been raised on such matters as the right to notice, to be heard, to participate as a party, and the obligation of agencies to make diligent searches for putative fathers whose rights, constitutional or otherwise, may be in jeopardy. The nebulous state of the law and the resulting confusion on the part of agencies, attorneys and judges made the study of this problem a matter of priority for the Commission.

In the aftermath of the Stanley decision, states and public and voluntary agencies have either overreacted or underreacted because of the absence of clear statutory guidelines. Overreaction has often been noted in agency or administrative practices requiring extensive searches for unidentified or unknown putative fathers which have resulted in failures to free children for adoption and an inability to plan for the future of many children. Needless, often futile and protracted, searches have also placed heavy staff and financial burdens on both public and voluntary agencies which can ill afford them. Overreaction has also been characterized,

in some states, by the equation of the rights of fathers of in-wedlock and out-of-wedlock children (for example, by requiring the latter's consent to the child's adoption) - a legal proposition not supported by the Stanley decision and clearly nullified by the Supreme Court's dismissal of the appeal of the New York Court of Appeals decision in Orsini.

On the other hand, underreaction to Stanley, by failing to provide concerned, adjudicated or other readily identifiable fathers of out-of-wedlock children with notice and an opportunity to be heard in proceedings involving the child's custody, guardianship or adoption, may result ultimately in the vacating of court orders in such proceedings.

To assist in its efforts, with funding from the Edna McConnell Clark Foundation, the Commission was able to study approaches taken by the states under Stanley and to develop a solution to meet New York's problems and requirements. On March 31, 1976, the Commission convened a meeting in Albany of interested parties, including representatives of the State Departments of Health and Social Services, the New York City Department of Social Services, the Office of Court Administration, the Law Revision Commission, the Legislature, and the Governor's Program Office. An agenda of issues had been prepared by the Commission staff, and these issues were discussed and led to fundamental decisions by the group. A bill was thereupon prepared by Commission staff (S.10484, A.12944) and introduced by Senators Pisani, Dunne and Halperin and Assemblymen Blumenthal and Gottfried, which reflected the decisions reached at the meeting.

This measure will dispel uncertainties by providing clear constitutional statutory guidelines for notice to fathers of

out-of-wedlock children. It will establish a desired finality in adoption proceedings, and will provide an expeditious method for child placement agencies of identifying those fathers who are entitled to notice through the creation of a registry of such fathers within the State Department of Social Services. Conversely, the bill will afford to concerned fathers of out-of-wedlock children a simple means of expressing their interest and protecting their rights to be notified and to have an opportunity to be heard. It will also obviate an existing disparity in Appellate Division decisions by permitting such fathers to be petititoners in paternity proceedings.

The measure is intended to codify the minimum protections for the putative father which Stanley would require. In so doing, it reflects policy decisions to (a) codify constitutional requirements; (b) clearly establish, as early as possible in a child's life, the rights, interests and obligations of all parties; (c) facilitate prompt planning for the future of the child and permanence of his status; and (d) through the foregoing, promote the best interests of children.

The bill passed the Legislature and was signed into Law by the Governor as Chapter 665 of the Laws of 1976.

Upon signing the bill, the Governor recommended that provisions governing the time for a putative father to respond to legal process be extended beyond the ten days afforded in the bill. The Commission intends to recommend corrective legislation early at the 1977 Legislative Session.

PREVENTIVE SERVICES

In its 1975 Report, the Commission strongly expressed its conviction that greater emphasis should be placed on the provision of preventive services within the child welfare system.

Foster care, we pointed out, while preferable in many situations by the time a child or a family's needs have come to public attention, brings with it for many families dangers of its own which can be more serious than the problems which gave rise to placement.

The traumatic effect on many children of displacement from their own homes is serious. Equally serious, in many cases, is the effect on a problem-laden family, struggling to survive in adverse circumstances, of the prolonged absence of one of its younger members. We noted that in the present system a foster care placement tends to perpetuate itself and is often terminated not by the return of a child to its natural home but by permanent neglect proceedings.

The Commission also noted, as an additional incentive to the more extensive development of other modes of treatment, that the cost of maintaining children in foster care had exceeded a quarter of a billion dollars on an annual basis. That cost is now computed at nearly three hundred fifty million dollars a year.

The Commission further observed that preventive services demonstration projects authorized by Chapter 911 of the Laws of 1973 were about to terminate at that time and that preliminary reports indicated that they had been resoundingly successful.

We are now pleased to note that a study of these "911" projects by the Child Welfare League of America gives ample confirmation of our thesis that the provision of preventive casework

services - even in cases where foster care, under normal circumstances, was deemed inevitable - was often a viable and beneficial alternative.

The most significant result of the demonstration projects was the finding that 92 per cent of the children receiving preventive services who had not been in foster care at their beginning were still at home six months after the projects' conclusion.

The estimated cost of casework services provided to the group was $1200 a year in contrast to a projected foster care cost of $6500 a year.

It would be difficult to find a more dramatic demonstration that home-centered services to children and their families are - even in cases normally destined for foster care - a preferred alternative to foster care unless urgent considerations of health and welfare or other temporary circumstances mandate a separation from the family unit.

The favorable results of the Chapter 911 projects and other locally initiated preventive services activities have reinforced the Commission's conviction (expressed in our 1975 Report) that the absence of specific legislative provisions for social services funding, licensure and operating norms for day services for children and their families required attention.

Accordingly, the Commission prepared and introduced such legislation in 1975 which, with subsequent amendment, has become Chapter 906 of the Laws of 1976.

Under this new statute day services will be furnished to children and their families to avert foster care placement, to promote the transfer of children from institutions to foster homes and to facilitate discharge from foster care. Fifty per cent

State aid will be available for approved programs, and local government shares may be met out of private donated funds.

Chapter 906 becomes effective April 1, 1977 and will remain in operation for two years. Prior to implementation and funding of the new statute, the State Department of Social Services and the State Division of the Budget are directed by this statute to prepare and submit an evaluation of existing day services programs and their funding sources. By April 1, 1979, the same officials are directed to submit an evaluation of the effectiveness (including cost-effectiveness and impact on the rate of growth of foster care caseloads) of day services programs funded pursuant to this new law.

ADOPTION SUBSIDY, ADOPTION SERVICES AND RELATED LEGAL SERVICES

In its 1975 Annual Report, as well as in its 1976 Report to the State Department of Social Services titled "Barriers to the Freeing of Children for Adoption" (summarized on pp. 22-31 above), the Commission raised a number of concerns relating to the effectiveness of New York's adoption subsidy law and pointed out that the State Adoption Exchange had proven woefully ineffective in placing children in adoptive homes. We approve the action of the 1975 Legislature in abolishing the Adoption Exchange and note with great interest the creation of a State picture-book adoptive placement undertaking (based on the favorable adoption placement record of the CAP Book, an illustrated listing service operated by the Council of Adoptive Parents, of Rochester, New York). This undertaking is called the "State Adoption Service" and was created by Chapter 702 of the Laws of 1975. The Commission is closely monitoring the implementation of this new statute.

A related major enactment of the 1976 Legislature was Chapter 836 which mandated the provision of defined adoption services by local social services departments.

Despite these important achievements, the Commission believes that great additional progress still must be made to promote the placement of children in adoptive homes. With funds from the Edna McConnell Clark Foundation, the Commission has undertaken a major research project which will evaluate fiscal and program issues raised by the implementation of the adoption subsidy program and the provision of adoption services generally, as well as the funding of legal services provided in connection with periodic Family Court review, the termination of parental rights, and

adoption orders. The Commission is doing field research in New York City and a number of upstate counties and expects to make legislative and administrative recommendations to facilitate the funding and provision of appropriate services and mechanisms to make adoptive placement a reality for many children.

SEALED ADOPTION RECORDS

In New York State, it is general child care agency practice never to disclose the identity of a child's natural parent or parents either to the child or his adoptive parents at any time. These practices are reflected in the letter of State law, under which the identity of the natural parents may not be revealed except upon court order for good cause.

In recent years, many individuals and several organizations representing adult adoptees have strongly claimed a right of the adopted to know the details of their heritage as an aid to sound personal growth as well as to provide necessary information to assist in medical diagnosis.

Opposed to this view are positions emphasizing the right to privacy of the natural parent or parents who gave up a child for adoption. Others, including some adoptive parents and child care agencies, have opposed the unsealing of adoption records on the grounds that such action would adversely affect the dynamics of the adoption process as it now exists, so as to reduce the number of children placed for adoption. Disclosure, some assert, would wreak unnecessary and profound psychological harm on adopted children.

The Commission is cognizant of the complexities of this delicate and significant issue. To shed light on this difficult problem, the Commission, jointly with the Assembly Committee on Child Care, held a public hearing on April 28, 1976 in Albany. Present and testifying at the hearing were forceful advocates for the unsealing of records as well as those in opposition to changing current law.

The Commission intends to continue its deliberations on this subject and to prepare recommendations.

In the meanwhile, the Commission notes that as a result of a recent decision by a Federal Court of Appeals sitting in Illinois, the constitutionality of state laws which provide for the withholding of records of adoptees is now before the Federal Courts.

PERSONS IN NEED OF SUPERVISION (PINS)

Elimination of Training School Placements

The Commission's 1975 report observed that PINS children "with the most serious problems are often placed in ill-equipped training schools because they are unable to meet the rigid standards of voluntary agencies". Chapter 515 of the Laws of 1976 prohibits the further placement of PINS in the training schools of the State Division for Youth (DFY) on and after February 1, 1977. Senator John Dunne, Chairman of the Commission's subcommittee on PINS, sponsored this measure, recommended in a resolution enacted earlier this year by the Commission, which strongly urged that training school placements of PINS be terminated. (See Appendix IV for the full text of the Commission's resolution.)

The subcommittee's investigation of the training schools confirmed earlier reports that these schools were barely capable of affording mere custodial care, that the level of education was seriously deficient and that virtually no psychiatric counselling was provided. At one such training school, for example, there was only one psychiatrist available one afternoon a week, although the population had been characterized as emotionally disturbed, with 13 per cent regularly receiving psychopharmaceuticals. The subcommittee was informed that family problems frequently led to the placement of most, if not all, of the PINS children, and yet DFY was unable to afford any meaningful assistance to parents and there was little rapport with community schools.

In short, the training schools had become a "dumping ground" for difficult-to-place children. For children of uncooperative

families, or for those with exceptionally deficient reading skills, the training schools had become a convenient dispositional alternative.

The Division for Youth has estimated that from one-quarter to one-third of the PINS in training schools could function in their own localities with community based assistance, such as homemaker services, and alternative methods of schooling. With an increase in family group homes and foster care, the proportion of adolescents who would not require training school placement might well reach 80 per cent. The remaining children, according to DFY, would be in need of intensive mental health services.

Reform of PINS placements was stimulated by a federal Law Enforcement Assistance Administration grant to New York State of $1.7 million for the removal of status offenders from correctional facilities and by the fact that voluntary agencies in the State have, in recent years, expressed a greater willingness to accept more PINS children. The Commission therefore concluded that elimination of training school placement would oblige the courts and encourage appropriate voluntary agencies to implement meaningful treatment programs for these children. Furthermore, the practice of reducing juvenile delinquent petitions to PINS, as a form of "plea bargaining", which had been found by the Commission to exist in several counties, would be discouraged at least in those cases where the child requires a training school placement.

We anticipate that the Division for Youth, acting in concert with voluntary agencies throughout the State, will provide a "fully adequate program of supervision and treatment of PINS" in order to meet the minimal constitutional standards, justifying the continuation of the PINS category (Matter of Lavette M., 35 N.Y. 2d at 36 (1974)).

Runaways

The Commission found that voluntary agencies caring for PINS or juvenile delinquents had no effective legal method of causing runaways from their facilities to be apprehended and returned. Although the State Police are authorized under the Executive Law to return runaways from DFY facilities, no statutory authority existed for returning runaways from voluntary agencies or programs conducted by social services officials.

With the support of voluntary agencies throughout the State, the Commission recommended legislation (S.9475) which was enacted as Chapter 607 of the Laws of 1976. This measure authorizes certain police officers to apprehend youngsters who run away from facilities operated by voluntary agencies or social services officials,to afford them appropriate protection from harm and to return them to treatment.

Age Extension

In its preliminary report the Commission referred to proposals that PINS jurisdiction be extended to include 16 and 17 year-olds. A bill to accomplish this end (S.5302) introduced at the request of the Commission in 1975 passed the Senate but not the Assembly. In 1976, a similar bill (S.8049) introduced by the Chairman of the Senate Social Services Committee passed the Senate but was not reported by the Assembly Child Care Committee.

The Commission intends to continue its review of this issue, as well as limitations on PINS placements which have been proposed by various legislators, with a view to resolving them at the 1977 session of the State Legislature.

Intake

The intake procedures of county probation departments, including diversion alternatives to formal court proceedings, were described in the Commission's 1975 report. The Senate Task Force on Critical Problems has also been studying the subject for the Commission and its subcommittees on PINS and Juvenile Delinquency. Its report and recommendations are expected later this year.

Law Guardians - Waiver

The Commission's recommendation in its preliminary report that "waiver of counsel by a PINS (or juvenile delinquents) be prohibited in proceedings, pursuant to §756 of the Family Court Act, to extend or continue a placement" was implemented by a Commission bill (S.5301) which became Chapter 709 of the Laws of 1975, amending §249 of the Family Court Act.

JUVENILE DELINQUENCY

Legislation

The Juvenile Justice Reform Act of 1976, Chapter 878 of the Laws of 1976, incorporated several measures recommended by Senator Donald M. Halperin, Chairman of the Commission's Subcommittee on Juvenile Delinquents. (Other members of the Subcommittee are Mrs. Glass, Mr. Hale, Mr. Trobe and Mr. Zukerman.) These recommendations, endorsed by the Commission were:

1. Probation reports are to be made available for inspection by the juvenile's law guardian, prior to the dispositional hearing, subject to certain exceptions. The law was patterned after the rules governing disclosure of probation reports in adult criminal cases. The Commission's bill containing similar provisions was S.8812-C.

2. The court's order must specify the section of the Penal Law or other law which the juvenile is found to have violated. The Commission's bill containing such a provision was S.9911-A.

3. Family Court orders and pertinent probation and evaluative records must be delivered to the Division for Youth or authorized agency with which the child is placed, thereby enabling more effective evaluation of the child's needs. A substantially similar provision was also contained in S.9911-A.

4. The need for protection and safety of the community must be considered in determining the type and length of placement of the juvenile. The Commission bill containing such a provision was S.9687.

The Commission supported another provision of the Reform Act which authorizes the New York City Corporation Counsel and County Attorneys elsewhere to enter into agreements with their district attorneys for the temporary assignments of assistant district attorneys to prosecute juvenile delinquency cases. The Commission held public hearings on the role of the prosecutor in Family Court

proceedings in New York City on June 17 and 18, 1976, which highlighted the problems of the Family Division in the Office of the New York City Corporation Counsel. It appeared that prosecutorial resources in New York City Family Court were severely inadequate. Under the new law, however, district attorneys will be available to introduce the proof in cases involving serious charges, because of their broader experience and resources in prosecuting adult cases.

Senator Halperin (after discussion with the Commission), introduced a proportionate sentencing bill. While the Reform Act did not adopt all of the provisions of this proposal, it reflected the merit of the Halperin bill provisions confining Class A felony offenders longer than Class B felony offenders,both of whom are liable to receive minimum periods of secure detention under the new law.

A Commission bill (S.9410-A), also sponsored by Senator Halperin, provided the right to counsel for persons placed in protective custody as material witnesses in Family Court proceedings. The Commission recognized that since a material witness may be deprived of liberty, such protective custody should not be imposed without legal representation. The bill became Chapter 656 of the Laws of 1976.

In addition, Senator Halperin introduced other juvenile justice legislation enacted this year which drew extensively on the resources and expertise of Commission staff members. For example, separate court parts to hear juvenile delinquency cases in New York City and provision for preferences in delinquency cases outside New York City were authorized by A.7831-D which became Chapter 608 of the Laws of 1976.

Public Hearings

In addition to its hearings concerning the role of the prosecutor, the Commission also held public hearings on December 16, 1975 in New York City and on October 7, 1976 in White Plains on the subject of crime in the schools. This subject is one which poses significant challenges to both education and law enforcement and about which the Commission is continuing its explorations.

Unannounced Visitations

To assist it in its deliberations and in the development of legislative proposals affecting juvenile offenders, the Subcommittee on Juvenile Delinquency in November 1975 made unannounced visits to ten Division for Youth facilities.

While the usual practice for public bodies when visiting facilities is to pre-arrange inspection visits, the Subcommittee made unannounced visits in the belief that these would offer the benefits of viewing the day-to-day conditions under which delinquents are confined.

A COMPENDIUM OF CHILD WELFARE LAWS

The Commission's statutory mandate includes the duty of examining the need for developing a separate child welfare code consolidating the numerous statutes relating to children. To direct this task, a Subcommittee on Child Welfare Code has been appointed, consisting of Judge Levine (Chairman), Mrs. Austin and Mr. Zukerman.

The Subcommittee has concluded that it would be desirable to develop a thorough compilation of all major State statutes relating to children. Such a compilation would reveal instances of inconsistency, duplication and overlap, as well as archaic provisions of the law. It would also serve as a basis for determining whether a separate Child Welfare Code is necessary or desirable. A compilation would also alleviate research and other problems confronted by judges, lawyers and others charged with the duty of enforcing or implementing the child welfare statutes.

Preliminary research reveals that over two-thirds of the titles in McKinney's Consolidated Laws of New York have portions relating to children. The necessary next step is a full detailed inventory of the laws, the elimination from consideration of all unrelated or tangentially related sections, and categorization of the remaining sections. Various category possibilities are being considered including: parent-child relationship; duties of local public officials; duties of voluntary agencies and institutions; representation of children in Court; duties of State agencies; regulation and licensure of child care agencies; children's rights and disabilities.

The category of "parent-child relationship" is, perhaps, the most substantive and would constitute the major part of the compilation. It may be further divided into such subcategories as: definitions; adoptions; abuse, neglect, maltreatment; termination of parental rights; custody; support; abandonment; legitimacy, paternity; visitation; guardianship; foster parents' rights; inheritance.

The development of a Child Welfare Code will be considered subsequent to and in the light of the recommendations of the Commission and legislative action thereon relating to the reorganization of New York's child welfare system.

JUDICIAL DECISIONS

In accordance with its statutory charge, the Commission continues to monitor and evaluate recent judicial decisions affecting child care, custody, and adoption. This activity has been particularly intensive in relation to the Commission's research and legislative recommendations dealing with termination of parental rights and the rights of fathers of out-of-wedlock children. Pertinent judicial decisions are cited and discussed elsewhere in this Report and in the Commission's Report on "Barriers to the Freeing of Children for Adoption".

In June, 1976 (subsequent to the completion of the "Barriers" Report) the New York Court of Appeals handed down two noteworthy decisions on the subject of termination of parental rights - Matter of Anonymous (St. Christopher's Home), 40 N.Y. 2d 96, and Matter of Orlando F., 40 N.Y. 2d 103. In Orlando F., the Court, in an appeal from a permanent neglect proceeding, gave emphasis to a 1973 law (Chapter 870) which clarified the disjunctive requirement that a parent "maintain contact with or plan for the future of the child". The Court therefore found that permanent neglect is established where a parent failed substantially and continuously to plan for the future of the child notwithstanding the maintenance of sufficient parent-child contact. The Court also held that in permanent neglect proceedings, absent extraordinary circumstances, the Family Court should direct the appointment of a law guardian to protect and represent the rights and interests of the child.

In Matter of Anonymous, the Court held that the provision of the permanent neglect law, which requires the petitioning agency to prove diligent efforts to encourage and strengthen the parental

relationship was not to be applied in a proceeding to terminate parental rights upon the ground of abandonment. The Court emphasized that abandonment and permanent neglect were entirely separate grounds for terminating parental rights and that the statutory distinctions between the grounds must not be blurred. The Commission notes, parenthetically, that its bill (Chapter 666 of the Laws of 1976), recodifying the statutory provisions for termination of parental rights, maintains the distinction emphasized by the Court.

The Commission also notes a decision handed down by the United States District Court, Southern District of New York, on March 22, 1976 in the case of Organization of Foster Families for Equality and Reform et al. v. Dumpson et al., 411 F. Supp. 1144. The divided three-judge court held that "before a foster child [in foster care for one year or longer] can be peremptorily transferred from the foster home in which he has been living, be it to another foster home or to the natural parents who initially placed him in foster care, he is entitled to a hearing at which all concerned parties may present any relevant information to the administrative decision-maker charged with determining the future placement of the child". The defendants were enjoined from removing any foster children, in care for a year or more, from their foster homes unless and until they have been granted a pre-removal hearing meeting the requirements set forth by the Court.

The Commission notes that the decision has been appealed to the United States Supreme Court, and is informed that a stay has been obtained pending appeal.

APPENDIX I

STATUS OF
TEMPORARY STATE COMMISSION ON CHILD WELFARE LEGISLATION
1975 AND 1976 LEGISLATIVE SESSIONS

STATUS OF TEMPORARY STATE COMMISSION LEGISLATION

1975 AND 1976 LEGISLATIVE SESSIONS

DESCRIPTION	PRINT NUMBER	STATUS
Provides criterion (best interest of child) in making order of disposition in permanent neglect proceeding - no presumption	S.1972 A.6068	LAW - Chapter 701 Laws of 1975
Evidence of insubstantial and infrequent contacts by parent with child insufficient to preclude finding of abandonment or permanent neglect	S.1992-A A.5610	LAW - Chapter 704 Laws of 1975
Extension of Section 392 Protections to Abused or Neglected Children in extension of placement under Family Court Act, Section 1055	S.5254 A.8126	LAW - Chapter 220 Laws of 1975
Amendment of definition of "Permanently Neglected Child" to clarify that it covers all children in care of agency regardless of technical procedure which caused them to come into care	S.1971 A.5608	LAW - Chapter 700 Laws of 1975
Eliminates need to take testimony of psychiatrist on staff of psychiatric clinic maintained by court in proceeding to terminate parental rights on ground of mental illness	S.1973 A.5609	LAW - Chapter 104 Laws of 1975
Provides additional separate ground of "Mental Retardation" for termination of parental rights	S.5252-A A.8316	LAW - Chapter 706 Laws of 1975
Requires court to include findings supporting its determination that a Section 392 order of disposition is in accordance with child's best interests	S.1970 Assembly Reprint 30,004 A.6075	LAW - Chapter 342 Laws of 1975

DESCRIPTION	PRINT NUMBER	STATUS
Extends date of Commission's Preliminary Report.	S.2402	LAW - Chapter 29, Laws of 1975
Provides for "adjournments in contemplation of dismissal" in child protective proceedings as means for obtaining court and agency supervision and protection without need for adjudicatory proceedings	S.5255-A	LAW - Chapter 707 Laws of 1975
	A.8231	
Extends requirement of 358-a proceeding to all voluntary placements of children in foster care for more than 14 days without regard to ADC eligibility or availability of Federal funds	S.5253	FAILED TO PASS
	A.8454	FAILED TO PASS
Creates new separate procedure for temporary transfers of care and custody: exempts short-term (under 30 days) placements from 358-a; makes clarifying and conforming amendments	S.6466-A	LAW - Chapter 710, Laws of 1975
	A.7799	
Reduces from 24 to 18 months, the period of foster care when child receives initial court review; requires notice of court's dispositional alternatives	S.5256-A	LAW - Chapter 708 Laws of 1975
	A.8452	
Requires appointment of law guardians in foster care review proceedings and requires that law guardian or counsel otherwise retained be permitted access to agency records pertaining to child	S.5251	FAILED TO PASS
	A.8317	FAILED TO PASS
Increased the maximum age, from under 16 to under 18 years, at which child may be subject to Family Court jurisdiction as a PINS (effective for two years)	S.5302	Passed in Senate in 1975 similar bill (S.8049) passed in Senate in 1976
	A.8451	FAILED TO PASS

DESCRIPTION	PRINT NUMBER	STATUS
Prohibits waiver of child's right to counsel in proceeding to extend placement of juvenile delinquent PINS	S.5301 A.8453	LAW - Chapter 709 Laws of 1975
Authorizes social services officials to provide day services to children and their families; provides for licensure and State reimbursement	S.6556-A A.8537-A	LAW - Chapter 906 Laws of 1976
Recodification of statutory provisions regarding termination of parental rights and related statutes	S.8850-A A.11310-A	LAW - Chapter 666 Laws of 1976
Conforms New York law to U.S. Supreme Court decision in Stanley vs. Illinois requiring that notice and opportunity to be heard be afforded to certain fathers of out-of-wedlock children in proceeding affecting custody of the child	S.10484 A.12944	LAW - Chapter 665 Laws of 1976
Creates Statewide Child Care Review Service	S.10375-A A.12850-A	LAW - Chapter 668 Laws of 1976
Extends to voluntary agencies and social service officials, authority to obtain assistance of peace officers in apprehending and returning PINS and juvenile delinquents who have absconded from their authority	S.9475 A.12087	LAW - Chapter 607 Laws of 1976
Provides right to counsel for person placed in protective custody as material witness in Family Court proceeding	S.9410-A A.12035-A	LAW - Chapter 656 Laws of 1976
Provides right to counsel for adults in certain Surrogate's Court proceedings including right of indigent adults to have counsel assigned	S.10546 A.12956	FAILED TO PASS FAILED TO PASS

DESCRIPTION	PRINT NUMBER	STATUS
Requires probation service to deliver probation report and other materials to person receiving placed juvenile delinquent or PINS, and requiring order of disposition upon adjudication of juvenile delinquent to include pertinent Penal Law section	S.9911-A	Passed in Senate, but not in Assembly (Similar provisions included in L. 1976, Ch. 878, §§14 and 21)
Provides for disclosure of probation report to juvenile's counsel prior to dispositional hearing, subject to various exceptions	S.8812-C	FAILED TO PASS (Similar provisions included in L. 1976 Ch. 878, §13)
Makes safety of the community a criterion in determining whether a juvenile should be released or discharged from placement	S.9687	FAILED TO PASS (Similar provisions relating to need for restrictive placement included in L. 1976, Ch. 878, §16)

APPENDIX II

COPIES OF SELECTED 1975 AND 1976 LEGISLATION REFERRED TO IN REPORT

STATE OF NEW YORK

7800

1975-1976 Regular Sessions

IN ASSEMBLY

March 25, 1975

Introduced by Mr. GOTTFRIED—read once and referred to the Committee on Child Care

AN ACT

to amend the social services law, in relation to child welfare services, to prevent placement of children in foster care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (n) of subdivision six of section three hundred ninety-eight of the social services law, as amended by chapter two hundred eighty-nine of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

(n) In accordance with the regulations of the department, [and only if and so long as the director of the division of the budget certifies that federal aid is available therefor,] is authorized to provide [intensive family casework] services to prevent the placement of children in foster care, *provided, however, that such preventive services shall be authorized only if the director of the division of the budget determines, after evaluating the results of demonstration projects authorized pursuant to chapter nine hundred eleven of the laws of nineteen hundred seventy-three and chapter fifty-three of the laws of nineteen hundred seventy-four, that*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

the preventive services provided under such projects are feasible as effective methods of preserving and restoring family units and that providing such services would result in fiscal savings to the state and local social services districts. Such services may be provided directly or with the approval of the state commissioner of social services through purchase from any agency authorized by regulation of the department to provide such [casework] *preventive* services to children; however, each local social services commissioner shall, prior to providing such [intensive family casework] *preventive* services, make findings that the children will be placed in [a] foster care [home] unless [intensive family casework] *such* services are provided and that it is reasonable to believe that by providing [intensive family casework] *such* services the child will be able to remain with his family.

§ 2. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

CHAPTER 608, LAWS OF 1976

STATE OF NEW YORK

7831-D

1975-1976 Regular Sessions

IN ASSEMBLY

March 25, 1975

Introduced by Messrs. GOTTFRIED, LENTOL, HECHT—Multi-Sponsored by—Messrs. ABRAMSON, CONNOR, Mrs. DIGGS, EVE, LASHER, MARCHISELLI, M. J. MURPHY, SIEGEL, Mrs. GOODHUE, Miss AMATUCCI, Mrs. LIPSCHUTZ, MONTANO, BARBARO, M. H. MILLER, DiFALCO—read once and referred to the Committee on Child Care—reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported and referred to Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—recommitted to Committee on Child Care in accordance with Assembly Rule 3, sec. 2—reported and referred to Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the family court act, in relation to the hearing of certain juvenile delinquency proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section one hundred seventeen of the family court act is hereby relettered to be subdivision (c), and a new subdivision, to be subdivision (b), is hereby inserted therein, to read as follows:

(b) For every juvenile delinquency proceeding under article seven of this act involving an allegation of an act committed by a person fourteen or fifteen years of age which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (sodomy in the first degree); 135.20 (kid-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

napping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law; or (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree:

(i) There is hereby established in the family court in the city of New York at least one "designated felony act part." Such part or parts shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings involving such an allegation. All such proceedings shall be originated in or be transferred to this part from other parts as they are made known to the court.

(ii) Outside the city of New York, all proceedings involving such an allegation shall have a hearing preference over every other proceeding in the court, except proceedings under article ten of this act.

§ 2. This act shall take effect ninety days after it shall become a law.

STATE OF NEW YORK

S. 9410-A A. 12035-A

SENATE-ASSEMBLY

March 30, 1976

IN SENATE—Introduced by Sens. HALPERIN, DUNNE, PISANI—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by Mr. GOTTFRIED—Multi-Sponsored by—Mr. SIEGEL—read once and referred to the Committee on Child Care—reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT

to amend the family court act, in relation to appointment of law guardians to represent minors placed in protective custody

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred forty-nine of the family court act, as separately amended by chapters six hundred eighty-two and seven hundred nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 249. Appointment of law guardian. In a proceeding under articles seven or ten *or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this chapter*, the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding *or who is sought to be placed in protective custody*, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred

EXPLANATION—*Matter in italics is new; matter in brackets [ ] is old law to be omitted.*

fifty-six, the court shall not permit the respondent to waive his right to be represented by counsel chosen by him or his parent or other person legally responsible for his care, or by a law guardian. In any other proceeding in which the court has jurisdiction, the court may appoint a law guardian to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.

STATE OF NEW YORK

9911-A

IN SENATE

April 14, 1976

Introduced by Sens. HALPERIN, PISANI, DUNNE—(at request of the Temp. State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Finance—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the executive law and the family court act, in relation to orders of adjudication and disposition for persons in need of supervision and juvenile delinquents, and in relation to supporting records from family court and probation service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section five hundred nineteen of the executive law, as added by chapter nine hundred forty-seven of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

2. The family court shall immediately notify the division of the placement of any child therewith. The family court shall also issue an order of adjudication and disposition which shall recite the facts upon which it is based. This order *and all other records in the possession of the family court and probation service relating to such child, including the probation report, and other available material including education, medical, psychological and psychiatric records,* shall be delivered *by the probation service* to a person authorized by the division to receive the child together with the child [and shall constitute the only paper requisite to a placement with the division].

§ 2. Section seven hundred fifty-three of the family court act, as amended by chapter eight hundred thirty-seven of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 753. Disposition of adjudication of juvenile delinquency. Upon an adjudication of juvenile delinquency, the court shall enter an order of disposition *which shall include the penal law section which defines the act which if done by an adult, would constitute a crime*:

(a) Suspending judgment in accord with section seven hundred fifty-five;

(b) Continuing the proceeding and placing the respondent in accord with section seven hundred fifty-six;

(c) Putting the respondent on probation in accord with section seven hundred fifty-seven;

(d) Committing the respondent in accord with section seven hundred fifty-eight; or

(e) Placing or committing the respondent in accordance with the provisions of section seven hundred sixty.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.

STATE OF NEW YORK

8812-C

IN SENATE

March 16, 1976

Introduced by Sens. HALPERIN, PISANI—(at request of The Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the family court act, in relation to confidentiality and disclosure of probation reports and to repeal subdivision (b) of section seven hundred forty-six of such act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section seven hundred forty-six of the family court act is hereby **repealed** and three new subdivisions, to be subdivisions (b), (c) and (d), are hereby inserted therein, in lieu thereof, to read as follows:

(b) All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law.

(c) Such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the making of an order pursuant to section seven hundred fifty-two, and may be used in a dispositional hearing and only therein.

(d) After an order has been made pursuant to section seven hundred fifty-two and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination by the child's law guardian or counsel or by the respondent if he is not

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

represented by a law guardian or other counsel. In its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review or appeal in any review or appeal from the order of disposition. If such reports or memoranda are made available to respondent or his law guardian or counsel, they shall also be made available to the petitioner or his counsel. Facts or opinions derived from such reports or memoranda may be utilized only in the course of a dispositional hearing.

§ 2. This act shall take effect on the first day of January next succeeding the date it shall have become a law and shall apply to all proceedings in which the dispositional hearing has commenced on or after such effective date.

STATE OF NEW YORK

9687

IN SENATE

April 13, 1976

Introduced by Sens. HALPERIN, PISANI, DUNNE—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT

to amend the executive law, in relation to release or discharge of children from schools or centers of the division of youth

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section five hundred twenty-three of the executive law, as amended by chapter eight hundred twenty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. The division may release from a school or center any child placed with the division whenever it deems such release to be in the best interest of the child [and], *that* suitable care and supervision can be provided *and that there is a reasonable probability that the child can be released without endangering the public safety;*; provided, however, that no child while absent from a school or center without the consent of the superintendent or director of such facility shall be released by the division *solely by reason of the absence*. The division may establish regulation in connection with such release.

§ 2. Subdivision one of section five hundred twenty-five of such law, as amended by chapter eight hundred twenty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. The division may discharge from its custody any child placed with the division *whenever it deems that there is reasonable probability that the child can be released without endangering the public safety;* provided, however, that no child while absent from a school or center without the consent of the superintendent or

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

director of such facility shall be discharged by the division *solely by reason of the absence*. The division shall establish regulations in connection with such discharge.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.

CHAPTER 515, LAWS OF 197

STATE OF NEW YORK

10737

IN SENATE

June 25, 1976

Introduced by Sens. DUNNE, PISANI—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT

to amend the executive law, in relation to placement of persons in need of supervision

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision six of section five hundred one of the executive law, as added by chapter one hundred five of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

6. To operate and maintain the state training schools and related facilities for the reception and care of [persons in need of supervision and] juvenile delinquents [operated by the state department of social services on the date this act shall take effect]. The division shall see that the purposes of such institutions are carried into effect, and to that end shall have all necessary powers.

§ 2. Paragraph (d) of subdivision two of section five hundred ten of such law, as amended by chapter eight hundred thirty-six of the laws of nineteen hundred seventy-two, is hereby amended to read as follows:

(d) For the purpose of this title the term "child" or "children" shall include a person or persons under the age of seventeen at the time of placement who have been adjudicated as juvenile delinquents [or as persons in need of supervision].

§ 3. Subdivisions one and two of section five hundred eleven of such law, as added by chapter nine hundred forty-seven of the laws of nineteen hundred seventy-one, are hereby amended to read, respectively, as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

1. The schools and centers shall be for the training, care and rehabilitation of children adjudicated as juvenile delinquents [or as persons in need of supervision] for their acts or conduct while under the age of sixteen, who are under the age of seventeen at the time of placement. Such institutions may be classified in accordance with program provided or by age or sex of the children.

2. Each school and center is authorized to receive juvenile delinquents [or persons in need of supervision] placed with the division by the family court pursuant to section seven hundred fifty-six of the family court act.

§ 4. This act shall take effect on the first day of January after it shall become a law. The division for youth shall act to remove persons in need of supervision in placement with the division for youth pursuant to title three of article nineteen-G of the executive law from facilities under such title three as soon as possible before such date, consistent with the best interests of such persons.

CHAPTER 507, LAWS OF 1976

STATE OF NEW YORK

Rec. 754 30031 Cal. No. 1414

IN ASSEMBLY

June 1, 1976

Senate bill Pr. No. 9475—Introduced by Senators DUNNE, HALPERIN, PISANI—read once and referred to the Committee on Child Care—committee discharged, bill substituted for Assembly bill Int. 12087—Introduced by Mr. GOTTFRIED—amended on third reading ordered reprinted as amended retaining its place on the order of third reading

AN ACT

to amend the family court act, in relation to the return of juvenile delinquents and persons in need of supervision who have run away from the custody of a commissioner of social services or an authorized agency

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seven hundred eighteen of the family court act is hereby amended by adding thereto a new subdivision, to be subdivision (c), to read as follows:

(c) If a child placed pursuant to this article in the custody of a commissioner of social services or an authorized agency shall run-away from the custody of such commissioner or authorized agency, any peace officer may apprehend, restrain, and return such child to such location as such commissioner shall direct or to such authorized agency and it shall be the duty of any such officer to assist any representative of the commissioner or agency to take into custody any such child upon the request of such representative.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

CHAPTER 568, LAWS OF 1976

STATE OF NEW YORK

S. 10375-A A. 12850-A

SENATE-ASSEMBLY

May 20, 1976

IN SENATE—Introduced by Sens. PISANI, HALPERIN—read twice and ordered printed, and when printed to be committed to the Committee on Social Services—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of Mr. Gottfried)—read once and referred to the Committee on Child Care—reported and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the social services law, in relation to authorizing the design and implementation of a child care review service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article six of the social services law is hereby amended by adding thereto a new title, to be title eight, to read as follows:

TITLE 8

STATE CHILD CARE REVIEW SERVICE

Section 440. Findings; purpose.

441. Definitions.

442. Child care review service; establishment, operations and procedure.

443. Advisory committee.

444. Confidentiality of records; related matters.

445. Funding.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 440. Findings; purpose. 1. The legislature finds that children who are in care away from their own homes on a full time basis, whether temporarily or for a prolonged period, require effective supervision and review of their status in care and of the plans for them. It is the policy of the state of New York to assure that such children are appropriately placed, that needed services are provided to them and their families, and that unnecessary and prolonged placements are avoided. The legislature further finds that this policy is often frustrated, and fiscal and program accountability have not been promoted because of divergent and overlapping jurisdictions of various government and private agencies; the lack of coordination among programs of these agencies; and the excessive workloads of judicial personnel, social services workers, and others responsible for reviewing the status in care of these children.

2. To assist in overcoming these difficulties, it is the intent of the legislature to establish a statewide management assistance system to be called the child care review service. The service shall be designed and operated to effectuate the following purposes:

(a) identification and assessment of the needs and problems of children in care and their families, to effectuate meaningful case planning;

(b) case management and supervision by child care agencies of children in full-time care away from their homes;

(c) supervision and evaluation by state agencies of local and voluntary child care agency performance;

(d) planning and policy making by state agencies, the governor and the legislature;

(e) meeting in a timely manner all judicial review requirements of this chapter, the family court act and any other applicable provisions of law;

(f) reduction of the need for manual form preparation; and

(g) meeting federal reporting requirements so as to qualify for federal funds under the federal social security act.

§ 441. Definitions. As used in this title, the following terms shall have the following meanings:

1. "Service" shall mean the child care review service created by this title.

2. "Advisory committee" shall mean the committee established by section four hundred forty-three of this title.

§ 442. Child care review service; establishment, operations and procedure. 1. The department, in consultation with the advisory committee, shall establish and operate a child care review service to accomplish the purposes of this title, for all children who are in the care of an authorized agency, or the department of mental hygiene or the division for youth, or for whom an application for such care is pending, and shall make such regulations as are appropriate to implement this title.

2. The service shall be implemented in stages as follows:

(a) In stage one the service shall be implemented with respect to all children under the age of twenty-one years for whom an authorized agency is providing foster care as defined in section three hundred ninety-two of this chapter.

(b) In stage two, the service shall be implemented with respect to children for whom an application to an authorized agency for foster care as defined in section three hundred ninety-two of this chapter is pending, or for whom the department of mental hygiene or the division for youth is providing full time care away from their homes, or for whom an application for such care is pending.

3. The department is authorized to enter into agreements with any person, firm, organization or association for the whole or any part of the design or operation of the service as described in this title. Any such agreements shall specify that such person, firm, corporation or association shall safeguard the confidentiality of information received or maintained by the service, in the same manner, and will remain subject to the same confidentiality requirements, as the department. The service shall be designed and operated so as not to conflict with or to impair or impede the child care management assistance system currently in operation with respect to those children for whom authorized agencies are providing foster care as defined in section three hundred ninety-two of this chapter, in counties comprising the city of New York and funded pursuant to provisions of this chapter.

4. The service shall collect, maintain, update, and distribute, as provided in this title, information from each authorized agency, the department of mental hygiene, the division for youth and the state board of social welfare to further the purpose of this title.

5. The service may request from any authorized agency, the department of mental hygiene, the division for youth, and the state board of social welfare, and these agencies and bodies shall submit to the service all information, including updating of information, in the form and manner and at such times as the department may require that is appropriate to the purposes and operation of the service.

6. Information to be submitted to or collected by the service, pursuant to subdivisions four and five, shall, to the extent possible, be in compatible form so as to facilitate the making of public policy decisions relating to child care programs supported by public funds and administered by various state, local and voluntary agencies.

7. In designing the service, the department, in consultation with the advisory committee, shall review all information reporting forms and financial claims forms and shall make every effort to consolidate and, where appropriate, eliminate duplicative

claiming and information reporting forms in order to develop uniform statewide claiming forms and information reporting forms.

8. Subject to regulations of the department the service shall:

(a) prepare and make available on a regular basis to each authorized agency, the department of mental hygiene and the division for youth such data as they may require to meet the purposes of this title;

(b) issue regular reports setting forth aggregate statewide and local statistical data with appropriate analyses, but not including individual identifying information; and

(c) issue reports as to the capabilities of the service and the types of information maintained by the service.

9. The department in consultation with the advisory committee shall prepare and submit the following reports to the governor and the legislature:

(a) within sixty days after the effective date of this act, a schedule for implementation of stage one, and

(b) thereafter, on or before January first of each year, a report on its progress in the development and operation of the service, including any significant problems encountered or anticipated in the design and operation of the service, together with a schedule for implementation of stage two and any recommendations for administrative or legislative changes that would further the purposes of this title.

§ 443. Advisory committee. 1. The department shall establish and meet regularly with an advisory committee of not more than twenty members to consider policy and planning issues relating to the service and to assist in the design, development, establishment and on-going operation of the service, including assisting in the resolution of issues concerning the safeguarding of the confidentiality of information. The advisory committee may in its discretion submit reports to the governor and the legislature.

2. The advisory committee shall be appointed by the commissioner, who shall appoint one of the committee's members to be its chairman. The members of the committee shall be appointed from the following categories, one or more from each category:

(a) designees of the commissioner;

(b) designees of the director of the division for youth;

(c) designees of the commissioner of the department of mental hygiene;

(d) designees of the director of the division of probation;

(e) designees of the state board of social welfare;

(f) designees of the administrative judge of the state of New York;

(g) designees of the director of the division of the budget;

(h) commissioners of local social services districts or their designees;

(i) representatives of voluntary child care agencies;

(j) persons active in organizations involved in the protection of civil liberties;

(k) persons active in organizations involved in promoting the interests of children.

§ 444. Confidentiality of records; related matters. 1. The department in consultation with the advisory committee shall make regulations;

(a) protecting the confidentiality of individual identifying information submitted to or provided by the service, and preventing access thereto, by, or the distribution thereof to, persons not authorized by law;

(b) setting forth procedures for informing any child or his representative of the nature of the system and its uses;

(c) allowing any child or his representative or any member of his family, an opportunity to review any information pertaining to such child or family and to request that any part of such information be amended or expunged; and

(d) providing that the service shall remove from its records and expunge the individual identifying information, excluding non-identifying child or family data to be used for historical purposes, concerning any child who has been discharged from care.

2. Prior to final promulgation of any regulations as described in subdivision one of this section, the department shall, in addition to complying with all other advance notice requirements make proposed regulations available to all state agencies charged with the administration or supervision of child care programs and to local government agencies and persons that have expressed an interest in safeguarding information maintained by the service, and shall provide such agencies with an opportunity to comment on the proposed regulations. In promulgating final regulations the department shall consider any comments received.

3. Any persons wilfully violating or failing to comply with the provisions of subdivision one of this section or wilfully violating or failing to comply with any regulation which the department is authorized under such subdivision to make, shall be guilty of a misdemeanor.

§ 445. Funding. The department shall explore the possibility of, and is authorized to take steps necessary to qualify for any available funding from any private source or from the federal government, and is authorized to use any funds for which the state qualifies for the purposes of the design, establishment or operation of the service.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK

S. 8850-A A. 11310-A

SENATE-ASSEMBLY

March 17, 1976

IN SENATE—Introduced by Sens. PISANI, DUNNE, HALPERIN—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Social Services—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by Mr. GOTTFRIED—Multi-Sponsored by—Mr. PASSANNANTE—(at request of the Temporary State Commission on Child Welfare)—read once and referred to the Committee on Child Care—reported and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the social services law and to repeal subdivisions six and seven of section three hundred eighty-four of such law, the domestic relations law, the family court act and to repeal sections six hundred twelve, six hundred thirteen and six hundred fifteen of such act, the judiciary law and the surrogate's court procedure act, in relation to termination of parental rights, transfer of the care and custody of children, periodic family court review of foster care status, and adoption, child custody and child protective proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The section heading and subdivisions one and two of section three hundred eighty-four of the social services law, as amended by chapter seven hundred seventeen of the laws of nineteen hundred sixty, subdivision one thereof having been amended by chapter six hundred eighty-nine of the laws of nineteen

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

hundred sixty-two, are hereby amended to read, respectively, as follows:

Guardianship *and custody* of destitute or dependent children; *commitment by surrender instrument*. 1. Method. The guardianship of the person and the custody of a destitute or dependent child *under the age of eighteen years* may be committed to an authorized agency [either by an order of the surrogate or judge of the family court as hereinafter provided or] by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

(c) [if the father of such child shall have neglected to provide for his family during the six months next preceding, or] if such child is born out of wedlock, by the mother of such child;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record;

2. Terms. Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms[, for such time] and subject to such conditions as may be agreed upon by the parties thereto. [If one of the purposes of such surrender is the adoption of such child from such authorized agency the] *The* instrument shall [make specific provision therefor and it may] recite that the authorized agency is thereby authorized and empowered to consent to the adoption of such child in the place and stead of the person signing the instrument, and *may recite* that the person signing the instrument waives any notice of such adoption[; it may also provide for the absolute surrender of such child to such authorized agency]. But no such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the [officer or board legally exercising the powers of a public welfare] *social services* official of the county[,] *or* city [or town] sought to be charged with the support of such child.

~~§ 2. Subdivisions six and seven of section three hundred eighty-four of such law are hereby repealed.~~

§ 3. Such law is hereby amended by adding thereto a new section, to be section three hundred eighty-four-b, to read as follows:

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order. 1. Statement of legislative findings and intent.

(a) The legislature hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the natural parent because the child's need for a normal family life will usually best be met in the natural home, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the natural parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the natural parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the natural parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, "child" shall mean a person under the age of eighteen years.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section three hundred ninety-two of this chapter or to section one thousand fifty-five of the family court act to institute a proceeding under this section, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent fails to institute a proceeding for the adoption of the child within six

months after the entry of the order committing the guardianship and custody of the child to such foster parent. Where the foster parent institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section three hundred ninety-two of this chapter or to section one thousand fifty-five of the family court act.

(c) Proceedings under this section shall be originated in the county in which the authorized agency has an office for the regular conduct of business or in which the child or his parent resides at the time of the initiation of the proceeding.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraphs (c) or (d) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraphs (a) or (b) of subdivision four.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents and upon such other persons as the surrogate or judge may in his discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. Any

proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in paragraphs (a), (b) or (d) of subdivision four are based upon a fair preponderance of the evidence, or upon a finding that one or more of the grounds specified in paragraph (c) of subdivision four are based upon clear and convincing proof.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three hundred eighty-four of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the initiation of the proceeding under this section; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the initiation of the proceeding under this section; or

(d) The child is a permanently neglected child.

5. (a) For the purposes of this section, a child is "abandoned" by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6. (a) For the purposes of this section, "mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, "mental retardation" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a physician and psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony

of, a physician and a certified psychologist, in the case of a parent alleged to be mentally retarded, or of a psychiatrist, in the case of a parent alleged to be mentally ill, such physician, psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed physician, psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

(7) (a) For the purposes of this section, "permanently neglected child" shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain con... with or plan for the

future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor;

(ii) A parent shall be deemed unable to maintain contact with or plan for the future of the child while he is actually incarcerated; and

(iii) The time during which a parent is actually hospitalized, institutionalized, or incarcerated shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when the parent has failed for a period of six months to keep the agency apprised of his or her location.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child;

(3) provision of services and other assistance to the parents so that problems preventing the discharge of the child from care may be resolved or ameliorated; and

(4) informing the parents at appropriate intervals of the child's progress, development and health.

8. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law.

§ 4. Subdivisions one and two of section three hundred eighty-four-a of such law, as added by chapter seven hundred ten of the laws of nineteen hundred seventy-five, are hereby amended to read, respectively, as follows:

1. Method. The care and custody of a child may be transferred by a parent or guardian, *and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child,* to an authorized agency by a written instrument in accordance with the provisions of this section. *Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of sections three hundred fifty-eight-a and three hundred ninety-two of this chapter.*

2. Terms. The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The department may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event *or within ten days thereafter* pursuant to section three hundred [eighty-four] *eighty-four-b* or section three hundred ninety-two of this chapter or article six or article ten of the family court act *or unless and so long as the parent or guardian is unavailable or incapacitated to receive the child.* The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event, whereupon such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon such request, the parent or guardian may seek return of the care and custody of the child by petition in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within [ten] *twenty* days after having received notice that the parent or guardian wishes the child returned, unless such action would be contrary to court order entered at any time prior to the expiration of such [ten] *twenty* day period pursuant to section three hundred [eighty-four] *eighty-four-b* or section three hundred ninety-two of this chapter or article six or article ten of the family court act. Expenditures by a social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

§ 5. Section three hundred ninety-two of such law, as amended by chapter nine hundred forty of the laws of nineteen hundred seventy-two, paragraph b of subdivision one as separately amended by chapters seven hundred eight and seven hundred ten of the laws of nineteen hundred seventy-five, subdivisions two and four as amended by chapter seven hundred eight of the laws of nineteen hundred seventy-five, paragraph d of subdivision four as separately amended by chapters seven hundred eight and seven hundred ten of the laws of nineteen hundred seventy-five, subdivision seven as amended by chapter three hundred forty-two of the laws of nineteen hundred seventy-five, subdivision nine as added

by chapter eight hundred four of the laws of nineteen hundred seventy-three, subdivision ten as amended by chapter eight hundred four of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

§ 392. Foster care status; periodic family court review. 1. As used in this section, unless otherwise expressly stated or unless the context requires a different interpretation, (a) "foster care" shall mean care provided a child in a foster family free or boarding home, group home, agency boarding home, child care institution, *health care facility* or any combination thereof:

(b) "child" shall mean a child under the age of eighteen years [whose guardianship and custody have been committed to an authorized agency pursuant to section three hundred eighty-four of this chapter by an order of a surrogate or judge of the family court or by a surrender instrument, or whose care and custody have been transferred to an authorized agency by an instrument executed pursuant to section three hundred eighty-four-a of this chapter, or whose custody has been temporarily or permanently awarded to an authorized agency by a judge of the family court pursuant to a finding that the child is a permanently neglected child as defined in section six hundred eleven of the family court act] *for whom an authorized agency is providing foster care, except a child who is in the care of an authorized agency pursuant to court order under article seven or ten of the family court act.*

2. Where a child has remained in foster care for a continuous period of eighteen months a petition to review the foster care status of such child:

(a) shall be filed in the family court by the authorized agency charged with the care[,] *and* custody or *the* guardianship *and custody* of such child;

(b) may be filed by another authorized agency having the supervision of such foster care;

(c) may be filed by the foster parent or parents in whose home the child resides or has resided during such period of eighteen months.

In the event that *foster care of* a child [in foster care is returned to his parent or parents] *is discontinued* and, within three months [of such return,] *thereafter the child* is again placed under the care of an authorized agency, [such period of return] *the period during which the child was not in foster care* shall not constitute an interruption of continuous foster care for the purposes of review pursuant to this section. However, [the] *such* period [of return] shall not be considered to be a part of any continuous period of foster care for the purposes of determining the length of time that a child may have been in foster care.

3. Such petition:

(a) shall be filed in the family court in the county in which the authorized

agency charged with the care[,] *and* custody or *the* guardianship *and custody* of such child has its principal office or where the child resides;

(b) shall set forth the disposition sought and the grounds therefor;

(c) shall, when filed by an authorized agency and notice is to be given to a parent, guardian or relative of the child, omit, for good cause shown, the name and address of the foster parent or parents with whom such child is residing at the time of the filing of the petition, and, in lieu thereof, there shall be filed with such petition a verified schedule executed by such agency setting forth the name and address of such foster parent or parents.

4. Notice of the hearing, including a statement of the dispositional alternatives of the court, shall be given and a copy of the petition shall be served upon the following, each of whom shall be a party entitled to participate in the proceeding:

(a) the authorized agency charged with the care[,] *and* custody or *the* guardianship *and custody* of such child[, if such authorized agency is not the petitioner;

(b) the authorized agency having supervision of such foster care, if such authorized agency is not the petitioner;

(c) the foster parent or parents in whose home the child resided or resides at or after the expiration of a continuous period of eighteen months in foster care;

(d) the *child's* parent or guardian who tra*nsferred* the care and custody of such child temporarily to an authorized agency;

(e) a person to whom a parent entrusted the care of the child, where such person transferred the care of the child to an authorized agency;

[(e)] *(f)* such other person as the court may, in its discretion, direct.

5. Service of notice of the hearing and the petition shall be made in such manner and on such notice as the court may, in its discretion, prescribe.

6. The court may, in its discretion, dispense with the attendance of the child at the hearing or may, with the consent of the parties, dispense with the hearing and make a determination based upon papers and affidavits submitted to the court.

7. At the conclusion of such hearing, the court shall, upon the proof adduced, in accordance with the best interest of the child, enter an order of disposition:

(a) directing that foster care of the child be continued; or

(b) in the case of a child [who has been committed temporarily to the care of] *whose care and custody have been transferred temporarily to* an authorized agency [by a parent, guardian or relative,] directing that the child be returned to [such] *the* parent, guardian or relative; or

(c) in the case of a child [who has been committed temporarily to the care of]

whose care and custody have been transferred temporarily to an authorized agency [by a parent, guardian or relative,] directing [that the] *any* agency *specified in subdivision four of this section to* institute a proceeding, *pursuant to section three hundred eighty-four-b of this chapter,* to legally free such child for adoption, *if the court finds reasonable cause to believe that grounds therefor exist.* [and upon] *Upon* a failure by such agency to institute such a proceeding within [thirty] *ninety* days after entry of such order, [permitting] *the court shall permit* the foster parent or parents in whose home the child resides to institute such a proceeding *unless the agency, for good cause shown and upon due notice to all parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the child in a subsequent adoption proceeding,* or

(d) in the case of a child whose guardianship and custody have been committed to an authorized agency by an order of a surrogate or judge of the family court or by a surrender instrument [or who has been judicially declared to be a permanently neglected child], directing that such child be placed for adoption in the foster family home where he resides or has resided or with any other person or persons.

An order of disposition entered pursuant to this subdivision shall include the court's findings supporting its determination that such order is in accordance with the best interest of the child. If the court promulgates separate findings of fact or conclusions of law, or an opinion in lieu thereof, the order of disposition may incorporate such findings and conclusions, or opinions, by reference.

8. The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person or agency who is before the court [and may require any such person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe].

9. The court may make an order directing an authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the [moral and temporal welfare] *best interests* of the child. Such order may include a specific plan of action for the authorized agency including, without limitation, requirements that such agency assist the parent in obtaining adequate housing, employment, counselling, medical care or psychiatric treatment.

10. The court shall possess continuing jurisdiction in proceedings under this section and, in the case of children who are continued in foster care, shall rehear

the matter whenever it deems necessary or desirable, or upon petition by any party entitled to notice in proceedings under this section, but at least every twenty-four months.

11. Where the court has entered an order of disposition, pursuant to paragraph (d) of subdivision seven, directing that the child be placed for adoption and the agency charged with the guardianship and custody of the child fails, prior to the rehearing of the proceeding pursuant to subdivision ten, to comply with such order, the court at the time of such rehearing may, in the best interests of the child, enter an order committing the guardianship and custody of the child to another authorized agency or may make any other order authorized pursuant to section two hundred fifty-five of the family court act.

§ 6. Paragraph (f) of subdivision six of section three hundred ninety-eight of such law, as amended by chapter eight hundred thirty-nine of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

(f) When in his judgment it is advisable for the welfare of the child, accept the surrender of a child by an instrument in writing in accordance with the provisions of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by the social services official of [an absolute] *a* surrender of a child born out of wedlock from the mother of such child shall relieve her from any and all liability for the support of such child.

§ 7. Subdivision two of section three hundred seventy-one of such law, as amended by chapter six hundred forty of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

2. "Abandoned child" means a child *under the age of eighteen years* who is abandoned [or deserted in any place] by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, [and left

(a) in destitute circumstances, or

(b) without proper food, shelter or clothing, or

(c) without being visited or having payments made toward his support, for a period of at least six months, by his parent, guardian or other lawful custodian without good reason] *in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b*;

§ 8. Subdivision seven of section one hundred nine of the domestic relations law, as amended by chapter one hundred forty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

7. "A child who has been surrendered to an authorized agency for the purpose of adoption" shall mean a child who has been surrendered to such an agency [for

the purpose of adoption or absolutely] pursuant to the provisions of section three hundred eighty-four of the social [welfare] *services* law.

§ 9. Section one hundred eleven of such law, as amended by chapter seven hundred four of the laws of nineteen hundred seventy-five, subdivision four and the three unnumbered closing paragraphs thereof having been amended separately by chapter two hundred forty-six of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 111. Whose consent required. *1.* Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:

[1.] *(a)* Of the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent;

[2.] *(b)* Of the parents or surviving parent, whether adult or infant, of a child born in wedlock;

[3.] *(c)* Of the mother, whether adult or infant, of a child born out of wedlock;

[4.] *(d)* Of any person or authorized agency having lawful custody of the adoptive child.

2. The consent shall not be required of a parent *or of any other person having custody of the child:*

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) [has abandoned the child or] who has surrendered the child to an authorized agency [for the purpose of adoption] under the provisions of *section three hundred eighty-four of* the social services law; or

(c) [of a parent] for whose child a guardian has been appointed under the provisions of section three hundred [eighty-four] *eighty-four-b* of the social services law; or

(d) who has been deprived of civil rights *pursuant to the civil rights law and whose civil rights have not been restored;* or

(e) who [is insane or who has been judicially declared incompetent or who is mentally retarded as defined by the mental hygiene law or who has been adjudged to be an habitual drunkard or who has been judicially deprived of the custody of the child on account of cruelty or neglect, or pursuant to a judicial finding that the child is a permanently neglected child as defined in section six hundred eleven of the family court act of the state of New York], *by reason of mental illness or mental retardation, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future un-*

able to provide proper care for the child. The determination as to whether a parent is mentally ill or mentally retarded shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law.[; except that notice]

3. Notice of the proposed adoption shall be given in such manner as the judge or surrogate may direct and an opportunity to be heard thereon may be afforded to a parent who has been deprived of civil rights and to [a] *any other* parent *whose consent to adoption may not be required pursuant to subdivision two,* if the judge or surrogate so orders. Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child. [For the purposes of this section, evidence of insubstantial and infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a finding that such parent has abandoned such child.]

4. Where the adoptive child is over the age of eighteen years the consents specified in [subdivisions two and three] *paragraphs (b) and (c) of subdivision one* of this section shall not be required, and the judge or surrogate in his discretion may direct that the consent specified in [subdivision four] *paragraph (d) of subdivision one* of this section shall not be required if in his opinion the [moral and temporal] *best* interests of the adoptive child will be promoted by the adoption and such consent cannot for any reason be obtained.

5. An adoptive child who has once been lawfully adopted may be readopted directly from such child's adoptive parents in the same manner as from its natural parents. In such case the consent of such natural parents shall not be required but the judge or surrogate in his discretion may require that notice be given to the natural parents in such manner as he may prescribe.

6. For the purposes of paragraph (a) of subdivision two:

(a) In the absence of evidence to the contrary, the ability to visit and communicate with a child or person having custody of the child shall be presumed.

(b) Evidence of insubstantial or infrequent visits or communication by the parent or other person having custody of the child shall not, of itself, be sufficient as a matter of law to preclude a finding that the consent of such parent or person to the child's adoption shall not be required.

(c) The subjective intent of the parent or other person having custody of the child, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph (a) of subdivision two manifesting such intent, shall not preclude a determination that the consent of such parent or other person to the child's adoption shall not be required.

(d) Payment by a parent toward the support of the child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child.

§ 10. Subdivision three of section one hundred twelve of such law, as amended by chapter ten hundred eleven of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

3. The authorized agency must present to such judge or surrogate a schedule to be annexed to the petition which shall be verified by a duly constituted official of the authorized agency having custody of the adoptive child or actually placing the child for adoption and shall contain (1) the full name of the child, (2) the manner in which the authorized agency obtained custody of the adoptive child, (3) the facts, if any, which render unnecessary the consent of either or both of the parents of the adoptive child, (4) a statement whether either parent had ever requested the agency to return the child to the parent, within thirty days of the execution and delivery of an instrument of [adoption] surrender to an authorized agency and, if so, all facts relating thereto. If a request for return of the child to a parent be made after the presentation to the court of the petition and schedule, the authorized agency shall promptly report to the court in writing the facts relating thereto and (5) all available information comprising the child's medical history.

§ 11. Section one hundred fourteen of such law, as separately amended by chapters two hundred sixty-one and one thousand eleven of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

§ 114. Order of adoption. If satisfied that the [moral and temporal] *best* interests of the adoptive child will be promoted thereby the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the [moral and temporal] *best* interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a commissioner of social services that he will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and may direct that the child's medical history be furnished to the adoptive parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he

shall be known by that name. All such orders made by a family court judge of Westchester county since September first nineteen hundred sixty-two, and on file in the office of the county clerk of such county shall be transferred to the clerk of the family court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his court and such papers must be sealed by him and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption which shall contain only the new name of the child and the date and place of birth of the child, the name of the adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption.

No person, including the attorney for the adoptive parents shall disclose the surname of the child directly or indirectly to the adoptive parents except upon order of the court. No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct.

In like manner as a court of general jurisdiction exercises such powers, a judge or surrogate of a court in which the order of adoption was made may open, vacate or set aside such order of adoption for fraud, newly discovered evidence or other sufficient cause.

§ 12. Subdivision five of section one hundred fifteen of such law, as amended by chapter five hundred seventy of the laws of nineteen hundred seventy, is hereby amended to read as follows:

5. Where the petition alleges that either or both of the natural parents of the child have been deprived of civil rights or [have been judicially declared incompetent or have been adjudged to be habitual drunkards] *are mentally ill or mentally retarded*, proof shall be submitted that such disability exists at the time of the proposed adoption.

§ 13. Subdivision four of section one hundred sixteen of such law, as added by chapter one hundred forty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

4. State two of private-placement adoption. If the judge or surrogate has found that there has been compliance with all the requirements hereof and is satisfied that the [moral and temporal] *best* interests of the child will be promoted by granting an order of adoption, the provisions of section one hundred fourteen of title two of this article shall apply.

§ 14. Section six hundred eleven of the family court act, as separately amended by chapters seven hundred and seven hundred four of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 611. Permanently neglected child; *purpose of part.* [A "permanently neglected child" is a person under eighteen years of age who is in the care of an authorized agency, either in an institution or in a foster home, and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the moral and temporal welfare of the child. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court. For the purposes of this section, evidence of insubstantial and infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child.]

The purpose of this part is to provide the procedures for proceedings initiated in family court, pursuant to section three hundred eighty-four-b of the social services law, for the commitment of the guardianship and custody of a child upon the ground that the child is a permanently neglected child. As used in this part "permanently neglected child" shall mean permanently neglected child as defined in subdivision seven of section three hundred eighty-four-b of the social services law, and unless the context requires otherwise, the provisions of such section three hundred eighty-four-b shall be deemed applicable requirements in addition to the procedures contained in this part. All references in this part to petitions and proceedings initiated "under this part" shall be deemed references to petitions and proceedings initiated under section three hundred eighty-four-b of the social services law upon the ground that the child is a permanently neglected child.

§ 15. Sections six hundred twelve, six hundred thirteen and six hundred fifteen of such act are hereby **repealed**.

§ 16. Section six hundred fourteen of such act, as separately amended by chapters eight hundred four and eight hundred seventy of the laws of nineteen hundred seventy-three, subdivision one as amended by chapter seven hundred of the laws of nineteen hundred seventy-five, paragraph (e) of subdivision one thereof as separately amended by chapters seven hundred and seven hundred one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 614. Originating proceeding [permanently to terminate] *for the commitment of the guardianship and* custody *of a permanently neglected child*. 1. A proceeding [permanently to terminate the parent's or other custodian's] *for the commitment of the guardianship and* custody of a child on the ground of permanent neglect is originated by a petition, alleging:

(a) the child is a person under eighteen years of age;

(b) the child is in the care of an authorized agency[, either in an institution or in a foster home];

(c) the authorized agency has made diligent efforts to encourage and strengthen the parental relationship and specifying the efforts made or that such efforts would be detrimental to the [moral and temporal welfare] *best interests* of the child and specifying the reasons therefor;

(d) the parent or custodian, notwithstanding the agency's efforts, has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so; and

(c) the best interests of the child require that the [parents' or other custodian's] *guardianship and* custody of the child be [terminated permanently] *committed to an authorized agency or to a foster parent authorized to originate this proceeding under section three hundred ninety-two of the social services law or section one thousand fifty-five of this act.*

2. Where the petitioner is not the authorized agency, allegations relating to the efforts of the authorized agency may be made upon information and belief.

§ 17. Section six hundred sixteen of such act is hereby amended to read as follows:

§ 616. Issuance of summons. On the filing of a petition under this part, the court may cause a copy of the petition and a summons to be issued, requiring the parent to show cause why the court should not enter an order [depriving the parent of all rights of] *committing the guardianship and* custody of the child [and awarding custody of such child] to the petitioner for the reason that the child is permanently neglected.

§ 18. Subdivision (c) of section six hundred seventeen of such act, as amended by chapter seven hundred sixty-nine of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

(c) Personal service within or without the state or in a foreign county [and service by publication] shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act, as the same may be amended from time to time, with respect to service of a citation. [The judge shall have such authority with respect to modes of service of summons by publication as is granted to the surrogate with respect to modes of service of a citation by publication, except that, unless otherwise ordered by the judge, publication in one newspaper designated in the order shall be sufficient.]

§ 19. Section six hundred seventeen of such act is hereby amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

(d) Service of the petition and other process by publication shall be made in accordance with the provisions of CPLR 316, provided, however, that a single publication in only one newspaper designated in the order shall be sufficient.

§ 20. Section six hundred twenty-two of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§ 622. Definition of "fact-finding hearing". When used in this part, "fact-finding hearing" means in the case of a petition [permanently to terminate] *for the commitment of the guardianship and* custody *of a child*, a hearing to determine whether the allegations required by paragraphs (a), (b), (c), and (d) *of sub-*

division one of section six hundred fourteen are supported by a fair preponderance of the evidence.

§ 21. Section six hundred twenty-three of such act is hereby amended to read as follows:

§ 623. Definition of "dispositional hearing". When used in this part, "dispositional hearing" means a hearing to determine [whether the interests of the child require that the parent's custody or the custody of another person responsible for the care of the child be terminated permanently and, if so,] what order of disposition should be made *in accordance with the best interests of the child.*

§ 22. Section six hundred twenty-four of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§ 624. Evidence. Only competent, material and relevant evidence may be admitted in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing. *Evidence of parental contact or of failure to maintain contact with a child subsequent to the date of the filing of a petition under this part shall be inadmissible in the fact-finding hearing. Such evidence may be admitted in the dispositional hearing but shall not, of itself, be sufficient as a matter of law to preclude or require an order committing the guardianship and custody of the child.*

§ 23. Section six hundred twenty-five of such act, as amended by chapter five hundred twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§ 625. Sequence of hearings. (a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made; *provided, however, that if all parties consent the court may, upon motion of any party or upon its own motion, dispense with the dispositional hearing and make an order of disposition on the basis of competent evidence admitted at the fact-finding hearing.*

(b) Reports prepared by the probation service or a duly authorized agency for use by the court prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the law guardian, counsel, party in interest, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing *or in the making of an order of disposition without a dispositional hearing pursuant to subdivision (a) of this section.*

§ 24. Section six hundred thirty-one of such act, as amended by chapter seven hundred one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 631. Disposition on adjudication of permanent neglect. At the conclusion of a dispositional hearing on a petition [permanently to terminate] *for the commitment of the guardianship and* custody *of a child*, the court shall enter an order of disposition:

(a) dismissing the petition in accord with section six hundred thirty-two; or

(b) suspending judgment in accord with section six hundred thirty-three; or

(c) [permanently terminating custody of the parent or other person responsible for the care of the child and awarding] *committing the guardianship and* custody *of the child* in accord with section six hundred thirty-four.

An order of disposition shall be made, pursuant to this section, solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular disposition.

§ 25. Section six hundred thirty-four of such act is hereby amended to read as follows:

§ 634. [Permanent termination of] *Commitment of guardianship and* custody; further orders. [If the] *The* court [enters] *may enter* an order under section six hundred thirty-one [permanently terminating custody, it may enter an order temporarily or permanently awarding] *committing the guardianship and* custody of the child to the petitioner on such conditions, if any, as it deems proper.

§ 26. Paragraphs (iii) and (iv) of subdivision (a) of section two hundred sixty-two of such act, as added by chapter six hundred eighty-two of the laws of nineteen hundred seventy-five, are hereby amended to read, respectively, as follows:

(iii) the respondent in any proceeding under [parts one and] *part* three of article six of this act;

(iv) the parent, foster parent, or other person having physical or legal custody of the child in any proceeding under section three hundred fifty-eight-a, three hundred eighty-four, *three hundred eighty-four-b,* or three hundred ninety-two of the social services law;

§ 27. Paragraph (ii) of subdivision (f) of section one thousand twelve of such act, as added by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

(ii) who has been abandoned, *in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law,* by his parents or other person legally responsible for his care.

§ 28. Section one thousand thirty-one of such act is hereby amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

(d) A proceeding under this article may be originated by a child protective agency pursuant to section one thousand thirty-two, notwithstanding that the child is in the care and custody of such agency. In such event, the petition shall allege facts sufficient to establish that the return of the child to the care and custody of his parent or other person legally responsible for his care would place the child in imminent danger of becoming an abused or neglected child.

§ 29. Subdivision (d) of section one thousand fifty-five of such act, as added by chapter two hundred twenty of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

(d) In addition to or in lieu of an order of extension or continuation of a placement made pursuant to subdivision (b), the court may make an order directing a social services official or other duly authorized agency to institute a proceeding to legally free the child for adoption, **[**and upon**]** *if the court finds reasonable cause to believe that grounds therefor exist. Upon* a failure by such official or agency to institute such a proceeding within **[**thirty**]** *ninety* days after entry of such order, **[**permitting**]** *the court shall permit* the foster parent or parents in whose home the child resides to institute such a proceeding *unless the social services official or other duly authorized agency caring for the child, for good cause shown and upon due notice to all parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the child in a subsequent adoption proceeding.*

§ 30. Section one thousand fifty-eight of such act, as added by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is hereby renumbered to be section ten hundred fifty-nine and such section as so renumbered is hereby amended to read as follows:

§ 1059. Abandoned child. If the court finds that a child was abandoned by his parents or by the other person lawfully charged with his care, it may make an order so finding and may discharge the child to the custody of the commissioner of social services **[**or to such other officer, board or department as may be authorized to receive children as public charges,**]** who shall provide for such child as in the case of a destitute child or as otherwise authorized by law. *In such case the court shall direct the commissioner to institute a proceeding pursuant to section three hundred eighty-four-b of the social services law to legally free such child for adoption.*

§ 31. Paragraph a of subdivision one of section thirty-five of the judiciary law, as amended by chapter seven hundred six of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of *the guardianship and custody of* a child to an authorized agency by reason of the mental illness or mental retardation of a parent, *or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or mentally retarded,* the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

§ 32. Paragraph (a) of subdivision two of section three hundred seven of the surrogate's court procedure act is hereby amended by adding thereto a new subparagraph, to be subparagraph (iv), to read as follows:

(iv) in an adoption proceeding under article seven of the domestic relations law or in a proceeding under section three hundred eighty-four-b of the social services law, a single publication in only one newspaper shall be sufficient.

§ 33. Subdivision three of section seventeen hundred four of such act is hereby amended to read as follows:

3. Whether the infant has had at any time a guardian appointed by will or deed or an acting guardian in socage or a guardian of the person appointed pursuant to section 384 *or section 384-b* of the social [welfare] *services* law.

§ 34. Subdivision two of section seventeen hundred five of such act is hereby amended to read as follows:

2. No process shall be necessary to a parent who has abandoned the infant or is deprived of civil rights or divorced from the parent having legal custody of the infant or an incompetent [or habitual drunkard] or who is otherwise judicially deprived of the custody of the infant or in case the infant is a married woman, to a husband who has abandoned her or is deprived of civil rights or divorced or an incompetent [or habitual drunkard].

§ 35. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, affect, impair, defeat or restore any rights, obligations, duties or interests accrued, incurred, conferred or terminated prior to the effective date of this act.

NOTE.—Subdivisions six and seven of section three hundred eighty-four of the social services law, proposed to be repealed by this act, relate to proceedings to terminate parental rights. They would be replaced by the more extensive provisions of section three hundred eighty-four-b, proposed to be added to the social services law by this act.

NOTE.—Sections six hundred twelve, six hundred thirteen and six hundred fifteen of the family court act, proposed to be repealed by this act, provide for a definition of "permanently neglected child", for venue and for appropriate petitioners in permanent neglect proceedings. They would be replaced by provisions of section three hundred eighty-four-b, proposed to be added to the social services law by this act.

CHAPTER 709, LAWS OF 1975

STATE OF NEW YORK

5301

1975-1976 Regular Sessions

IN SENATE

March 25, 1975

Introduced by Sens. DUNNE, PISANI, HALPERIN—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT

to amend the family court act, in relation to prohibiting waiver of the right to counsel in proceedings to extend or continue the placement of a juvenile delinquent or person in need of supervision

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred forty-nine of the family court act, as amended by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

§ 249. Appointment of law guardian. In a proceeding under articles seven or ten, the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding if independent legal representation is not available to such minor by reason of inability to pay other counsel or other circumstances. *In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

hundred fifty-six, the court shall not permit the respondent to waive his right to be represented by counsel chosen by him or his parent or other person legally responsible for his care, or by a law guardian. In any other proceeding under this act, on the request of the minor or on the request of a parent or other person legally responsible for the minor's care or on request of the corporation counsel, county attorney or district attorney, the court may appoint a law guardian to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child by reason of inability to pay other counsel or other circumstances. The family court on its own motion may make such appointment.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK

Cal. No. 1090 7752—A

1975-1976 Regular Sessions

IN ASSEMBLY

March 25, 1975

Introduced by Messrs. GOTTFRIED, FREY—Multi-Sponsored by—Messrs. ABRAMSON, CONNOR, HOYT, KOPPELL, LENTOL, MARCHISELLI, M. J. MURPHY, BARBARO, SIEGEL, ZIMMER—read once and referred to the Committee on Child Care—reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading

AN ACT

to amend the social services law, in relation to establishing a state-wide adoption service and repealing section three hundred seventy-two-b relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three hundred seventy-two-b of the social services law is hereby **repealed** and a new section three hundred seventy-two-b is hereby inserted therein, in lieu thereof, to read as follows:

§ 372-b. Statewide adoption service. 1. There shall be established by the department either directly or through purchase a statewide adoption service which shall serve all authorized agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption but have remained in foster care for a period of three months or more. Such period in foster care shall

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

include any period of foster care immediately preceding the date on which the child was legally freed for adoption. The service shall provide descriptions and photographs of such children, and shall also provide any other information deemed useful in the recruitment of adoptive families for each such child. The exchange shall be updated monthly.

2. The service may be organized on a regional basis, but shall be provided to all authorized child caring agencies and in accordance with the regulations of the department, to all appropriate citizen groups and other organizations and associations interested in children's services.

3. The department shall promulgate regulations governing the operations of the adoption service. Such regulations shall require all authorized agencies in the state to make diligent efforts to make adoption available for every child needing a permanent home. The board, after consultation with the department, shall promulgate rules to maintain enlightened adoption policies and standards.

4. Each authorized agency shall refer to the adoption service, accompanied by a photograph and description, as shall be required by departmental regulations, each child in its care who has been legally freed for adoption and who has been in foster care for the period specified in subdivision one of this section and for whom no adoptive home has been found. The department shall establish criteria by which an agency may determine that a child need not be listed on the service. Such children's names shall be forwarded to the department by the authorized agency, with reference to the specific reason by which the child was not placed on the service. The department shall establish procedures for periodic review of the status of such children. If the department, in accordance with the criteria it has established, determines that adoption would be appropriate for a child not placed with the service, the agency shall forthwith list the child. Each authorized agency may voluntarily refer any child who has been legally freed for adoption.

5. Expenditures by a social services district for the care and maintenance of a child who has not been referred to the adoption service in accordance with the requirements of this section shall not be subject to state reimbursement.

§ 2. This act shall take effect on the first day of April, nineteen hundred seventy-six; provided, however, that the department and the social services districts are authorized to take such steps prior to the effective date of this act as may be necessary to facilitate the implementation of the statewide adoption service.

STATE OF NEW YORK

11563-A Cal. No. 1732

IN ASSEMBLY

March 29, 1976

Introduced by Mr. GOTTFRIED—Multi-Sponsored by—Messrs. BARBARO, BIANCHI, BROWN, Mrs. CONNELLY, CONNOR, FORTUNE, FREY, HARENBERG, HOCHBRUECKNER, HOYT, KOPPELL, LANDES, LEWIS, MARCHISELLI, M. H. MILLER, NINE, PASSANNANTE, POSNER, Mrs. RUNYON, SIEGEL, SILVERMAN, STAVISKY, Mrs. LIPSCHUTZ—read once and referred to the Committee on Child Care—reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading

AN ACT

to amend the social services law, in relation to mandating the providing of adoption services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three hundred seventy-two-b of the social services law is hereby renumbered to be section three hundred seventy-two-c and a new section is hereby added thereto, to be section three hundred seventy-two-b, to read as follows:

§ 372-b. Adoption services. 1. Each social services official shall provide, either directly or through purchase of service, adoption services for each child in their care who is listed with the statewide adoption service. Such adoption services shall include the evaluation of a child's placement needs and pre-placement planning, recruitment of and homestudy for prospective adoptive parents, training of adoptive parents, placement planning, supervision and post adoption services.

2. The department shall promulgate regulations which shall require that adoption services be made available to all children who are listed with the New York state adoption service. Such regulations shall also provide for cooperation between local social services commissioners, and for apportioning reimbursement for adoption ser-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

vices where more than one agency or social services district has provided such services for a child.

3. The board, after consultation with the department, shall promulgate rules to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

4. Expenditures made by a social service district for adoption services and their administration, pursuant to the provisions of this section, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows: There shall be paid to each social service district (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of its expenditures for adoption services and their administration after first deducting therefrom any federal funds received or to be received on account thereof, and any expenditures defrayed by private contributions.

§ 2. Section three hundred seventy-two-c of such law, as added by chapter seven hundred two of the laws of nineteen hundred seventy-five and as thus renumbered by bill section one of this act, is hereby amended to read as follows:

§ 372-c. Statewide adoption service. 1. There shall be established by the department either directly or through purchase a statewide adoption service which shall serve all authorized agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption but have remained in foster care for a period of three months or more. Such period in foster care shall include any period of foster care immediately preceding the date on which the child was legally freed for adoption. The service shall provide descriptions and photographs of such children, and shall also provide any other information deemed useful in the recruitment of adoptive families for each such child. The [exchange] *service* shall be updated monthly.

2. The service may be organized on a regional basis, but shall be provided to all authorized child caring agencies and in accordance with the regulations of the department, to all appropriate citizen groups and other organizations and associations interested in children's services.

3. The department shall promulgate regulations governing the operations of the adoption service. [Such regulations shall require all authorized agencies in the state to make diligent efforts to make adoption available for every child needing a permanent home. The board, after consultation with the department, shall promulgate rules to maintain enlightened adoption policies and standards.]

4. Each authorized agency shall refer to the adoption service, accompanied by

a photograph and description, as shall be required by departmental regulations, each child in its care who has been legally freed for adoption and who has been in foster care for the period specified in subdivision one of this section and for whom no adoptive home has been found. The department shall establish criteria by which an agency may determine that a child need not be listed on the service. Such children's names shall be forwarded to the department by the authorized agency, with reference to the specific reason by which the child was not placed on the service. The department shall establish procedures for periodic review of the status of such children. If the department, in accordance with the criteria it has established, determines that adoption would be appropriate for a child not placed with the service, the agency shall forthwith list the child. Each authorized agency may voluntarily refer any child who has been legally freed for adoption.

5. Expenditures by a social services district for the care and maintenance of a child who has not been referred to the adoption service in accordance with the requirements of this section shall not be subject to state reimbursement.

§ 3. This act shall take effect ninety days after it shall have become a law.

STATE OF NEW YORK

8049

IN SENATE

February 25, 1976

Introduced by Sen. W. T. SMITH—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

to amend the social services law, the family court act and the penal law, in relation to eliminating improper sex distinctions between children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision six of section three hundred seventy-one of the social services law, as added by chapter six hundred ninety of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

6. "Person in need of supervision" means a [male] *child* less than [sixteen years of age and female less than] eighteen years of age who is habitually truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority.

§ 2. Subdivision (b) of section seven hundred twelve of the family court act, as amended by chapter nine hundred six of the laws of nineteen hundred seventy, is hereby amended to read as follows:

(b) "Person in need of supervision" means a [male] *child* less than [sixteen years of age and a female less than] eighteen years of age who does not attend school in accord with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority.

§ 3. Subdivision (a) of section seven hundred eighteen of such act, as amended by chapter eight hundred eleven of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted

(a) A peace officer, *whose primary duty is the enforcement of laws relating to or affecting children, or any police officer* may return to his parent or other person legally responsible for his care any [male] *child* under the age of [sixteen or female under the age of] eighteen who has run away from home without just cause or who, in the reasonable opinion of [the peace] *such an* officer, appears to have run away from home without just cause. For purposes of this action, [a peace] *an* officer may reasonably conclude that a child has run away from home when the child refuses to give his name or the name and address of his parent or other person legally responsible for his care or when the peace officer has reason to doubt that the name or address given are the actual name and address of the parent or other person legally responsible for the child's care.

§ 4. Subdivision (b) of section seven hundred thirty-two of such act, is hereby amended to read as follows:

(b) the respondent[, if male] was under [sixteen years of age and, if female, was under] eighteen years of age at the time of the specified acts; and

§ 5. Subdivision one of section 260.10 of the penal law, as amended by chapter three hundred eighty-nine of the laws of nineteen hundred seventy, is hereby amended to read as follows:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a [male] child less than [sixteen] *eighteen* years old [or a female child less than seventeen years old] or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health; or

§ 6. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

STATE OF NEW YORK

10484

IN SENATE

May 26, 1976

Introduced by Sens. PISANI, DUNNE, HALPERIN—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

to amend the social services law, the domestic relations law, the judiciary law and the family court act, in relation to certain rights of fathers of out-of-wedlock children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The social services law is hereby amended by adding thereto a new section, to be section three hundred eighty-four-c, to read as follows:

§ 384-c. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any other law, notice as provided herein shall be given to the persons specified in subdivision two of this section of any proceeding initiated pursuant to sections three hundred fifty-eight-a, three hundred eighty-four, and three hundred eighty-four-b of this chapter involving a child born out-of-wedlock.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) Any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of this chapter;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of this chapter;

EXPLANATION—Matter in italics is new; matter in brackets [ ] is old law to be omitted.

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child or the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the mother in written, sworn statement; and

(g) any person who was married to the child's mother subsequent to the birth of the child.

3. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child. In any proceeding brought upon the ground sperified in paragraph (d) of subdivision four of section three hundred eighty-four-b, a person served pursuant to this section may appear and present evidence only in the dispositional hearing.

4. Notice under this section shall be given at least ten days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of this chapter.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the transfer or commitment of the child's care, custody or guardianship or in the child's adoption in this or any subsequent proceeding in which such care, custody or guardianship or adoption may be at issue.

7. No order of the court in any proceeding pursuant to section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-b of this chapter or in any subsequent proceeding involving the child's custody, guardianship or adoption shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five. Nor shall any order of the court in any proceeding involving the child's custody, guardianship or adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding in which the court

determined that the transfer or commitment of the child's care, custody or guardianship to an authorized agency was in the child's best interests.

§ 2. Such law is hereby amended by adding thereto, a new section, to be section three hundred seventy-two-c, to read as follows:

§ 372-c. Putative father registry. 1. The department shall establish a putative father registry which shall record the names and addresses of: (a) any person adjudicated by a court of this state to be the father of a child born out-of-wedlock; (b) any person who has filed with the registry before or after the birth of a child out-of-wedlock, a notice of intent to claim paternity of the child; (c) any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person.

2. A person filing a notice of intent to claim paternity of a child shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

3. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

4. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

5. The department shall, upon request, provide the names and addresses of persons listed with the registry to any court or authorized agency, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

§ 3. The domestic relations law is hereby amended by adding thereto a new section, to be section one hundred eleven-a, to read as follows:

§ 111-a. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any other law, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who has previously received notice of any proceeding involving the child, pursuant to section three hundred eighty-four-c of the social services law, and provided further that notice in an adoption

proceeding, pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of the social services law;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child or the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the mother in written, sworn statement; and

(g) any person who was married to the child's mother subsequent to the birth of the child.

3. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child.

4. Notice under this section shall be given at least ten days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c of the social services law, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of the social services law.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the adoption or other disposition of the custody of the child.

7. No order of adoption and no order of the court pursuant to section one hundred fifteen-b shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five. Nor shall any order of adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding pursuant to section one hundred fifteen-b in which the court determined that the best interests of the child would be served by adoption of the child by the adoptive parents.

§ 4. Section two hundred fifty-four of the judiciary law, as amended by chapter four hundred seven of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 254. Reports by clerks to state officers. The clerk of each court, shall annually, in the month of December, report to the secretary of state all changes of names of individuals or of corporations, which have been made in pursuance of orders filed in their respective offices during the past year and since the last previous report, and also report in like manner to the superintendent of banks all changes of the names of banking corporations and to the superintendent of insurance all changes of names of corporations authorized to make insurances.

When a court of competent jurisdiction shall make a determination as to the parentage of any person, the clerk of the court shall forthwith transmit to the state commissioner of health on a form prescribed by him a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue. *When the person whose parentage has been determined is under the age of eighteen years, such clerk shall also transmit forthwith to the state commissioner of social services for recordation in the putative father registry established pursuant to section three hundred seventy-two-c of the social services law, on a form prescribed by such commissioner in consultation with the office of court administration, a notification of the determination including the names and address of the person whose parentage was determined and the person who was determined to be the father.*

Whenever an order of adoption has been made by a court of competent jurisdiction the clerk of such court shall forthwith transmit to the state commissioner of health on a form prescribed by him a written notification of such order, together with the name given to the adopted person at its birth and such other facts as may assist in identifying the birth record of the person adopted.

If any determination as to parentage or order of adoption of a person as aforesaid shall be reversed, set aside, or abrogated by a later judgment, decree or order of the same or of a higher court, that fact shall be immediately com-

municated in writing to the state commissioner of health, *and, in addition, in the case of a determination as to parentage, to the state commissioner of social services*, on a form prescribed by him by the clerk of the court which entered such judgment, decree, or order.

Whenever it appears to any clerk, aforesaid, that the person whose parentage was in issue or the person adopted was born in New York city, the clerk shall transmit the written notification aforesaid to the health services administration of such city, instead of the state commissioner of health.

§ 5. Section five hundred twelve of the family court act is hereby amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

(d) The word "father" refers to the father of a child born out-of-wedlock.

§ 6. Sections five hundred seventeen, five hundred twenty-two, five hundred twenty-three, five hundred twenty-seven, five hundred thirty-one, five hundred thirty-two, five hundred thirty-three, five hundred thirty-four, five hundred forty-one, five hundred forty-two and five hundred forty-seven of such act are hereby amended to read, respectively, as follows:

§ 517. Time for instituting proceedings. (a) Proceedings to establish the paternity of the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been acknowledged by the father in writing or by furnishing support.

(b) If the petitioner is a public welfare official, the proceeding may be originated not more than ten years after the birth of the child.

(c) If the petitioner is a person alleging to be the father, the proceeding may be originated at any time prior to the child's eighteenth birthday and not thereafter.

§ 522. Persons who may originate proceedings. Proceedings to establish the paternity of the child and to compel support under this article may be commenced by the mother, whether a minor or not, *by a person alleging to be the father, whether a minor or not*, by the child's guardian or other person standing in a parental relation or being the next of kin of the child, or by any authorized representative of an incorporated society doing charitable or philanthropic work, or if the mother or child is or is likely to become a public charge on a county, city or town, by a public welfare official of the county, city or town where the mother resides or the child is found.

§ 523. Petition. Proceedings are commenced by the filing of a verified petition, alleging that the person named as respondent, *or the petitioner if the petitioner is a person alleging to be the child's father*, is the father of the child and petitioning the court to issue a summons or a warrant, requiring the respondent

to show cause why the court should not enter a declaration of paternity, an order of support, and such other and further relief as may be appropriate under the circumstances. The petition shall be in writing and verified by the petitioner.

§ 527. Preliminary procedure on warrant. (a) When a respondent is taken into custody pursuant to a warrant issued by a family court in a county in New York city under section five hundred twenty-five, he *or she* shall be taken before the court issuing the warrant if the respondent is taken into custody in New York city. If the respondent is taken into custody in a county not within New York city, he *or she* shall be taken before a family *court* judge in that county.

(b) When a respondent is taken into custody pursuant to a warrant issued by a family court in a county not within the city of New York, he *or she* shall be taken before the court issuing the warrant if the respondent is taken into custody in the county in which the court sits. If the respondent is taken into custody in a different county, he *or she* shall be brought before a family court judge in that county.

§ 531. Hearing. The trial shall be by the court without a jury. The mother or the [respondent] *alleged father* shall be competent to testify but the respondent shall not be compelled to testify. If the mother is married both she and her husband may testify to nonaccess. If the respondent shall offer testimony of access by others at or about the time charged in the complaint, such testimony shall not be competent or admissible in evidence except when corroborated by other facts and circumstances tending to prove such access. The court may exclude the general public from the room where the proceedings are heard and may admit only persons directly interested in the case, including officers of the court and witnesses.

§ 532. Blood grouping test; costs of test. The court, on motion of [the respondent] *any party, shall advise the parties of their right to a blood test and* shall order the mother, her child and the [respondent] *alleged father* to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the [defendant] *alleged father* can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established. If the [respondent] *alleged father* is financially unable to pay for the costs of a test, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from its own funds where the child is not and is not likely to be a public charge or from the funds of the public welfare officer where the child is or is likely to be a public charge.

§ 533. Adjournment on application of party. The court, on application of either party, may for good cause shown grant such adjournments as may be necessary. If an adjournment is granted upon the request of either [the respondent or the petitioner] *party*, the court may require the respondent to give an undertaking for appearance [or in default thereof commit him until the hearing resumes].

§ 534. Adjournment on motion of court. On its own motion, the court may adjourn the hearing after it has made a finding of paternity to enable it to make inquiry into the surroundings, conditions and capacities of the child, into the financial abilities and responsibilities of both parents or for other proper cause. If the court so adjourns the hearing, it may require the respondent to give an undertaking to appear [or in default thereof may commit him until the hearing resumes].

§ 541. Order dismissing petition. If the court finds the [respondent] *male party* is not the father of the child, it shall dismiss the petition. If a neglect petition was filed in the paternity proceeding, the court retains jurisdiction over the neglect petition whether or not it dismisses the paternity petition.

§ 542. Order of filiation. If the court finds the [respondent] *male party* is the father of the child, it shall make an order of filiation, declaring paternity.

§ 547. Substitution of trustee. The court, on motion of [the petitioner] *a party* or otherwise, may at any time for good cause shown substitute another trustee for the one designated and acting.

§ 7. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, impair, defeat or restore any rights, obligations, duties, or interests accrued, incurred, conferred or terminated prior to the effective date of this act.

CHAPTER 90[illegible], LAWS OF 1976

STATE OF NEW YORK

S. 6556-A A. 8537-A

1975-1976 Regular Sessions

SENATE-ASSEMBLY

May 29, 1975

IN SENATE—Introduced by Sens. PISANI, DUNNE, HALPERIN—read twice and ordered printed, and when printed to be committed to the Committee on Social Services—reported favorable from said committee and committee to the Committee on Finance—recommitted to Committee on Finance in accordance with Senate Rule 6, sec. 8—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of Mr. Gottfried)—read once and referred to the Committee on Child Care—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the social services law, in relation to authorizing day services programs for children and families

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article six of the social services law is hereby amended by adding thereto a new title, to be title seven, to read as follows:

TITLE 7

DAY SERVICES FOR CHILDREN AND FAMILIES

Section 430. Day services; when social services official may furnish.

431. Licensure.

432. State reimbursement; standards of payment.

433. Other state funding sources.

434. Funding limitations.

§ 430. Day services; when social services official may furnish. 1. In order to preserve and stabilize family life, to prevent the need for placement of children outside

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

their homes, and to enable children in foster care to return to their families as expeditiously as possible, a social services official is authorized to provide day services at public expense to children and their families residing in his territory, pursuant to the provisions of this title.

2. Day services may be provided in cases where the social services official has determined that such services would promote or accomplish one or more of the following objectives:

(a) to avert a risk of serious impairment or disruption of a family unit which would result in the placement of a child outside his own home;

(b) to enable a child who has been placed in a child care institution or other group care facility to be placed in a foster care setting more closely oriented to community or family life;

(c) to enable a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible.

3. If the child's family is able to pay part or all of the costs of day services, such family shall be required to pay such fees therefor as may be reasonable in the light of such ability pursuant to regulations of the department.

4. Day services may be provided by a social services official either directly or through purchase. Purchase of such services may be made only from a private non-profit corporation or association, except when the commissioner shall have approved the purchase of such services from a private proprietary facility by a social services official who has demonstrated a lack of conveniently accessible non-profit facilities that are adequate to provide the required services.

5. As used in this title, "day services" shall mean care and treatment for part of the day of one or more children under eighteen years of age and their families in a program which provides to such children and families in accordance with their needs various services such as psychiatric, psychological, social casework, educational, vocational, health, transportation and such other services as may be appropriate. Such services shall be provided in accordance with program standards promulgated by the department. Day services may be continued after the eighteenth birthday of a child in the care of an authorized agency and until he becomes twenty-one years of age. Day services shall not be provided to any children and their families for periods in excess of one year, without the approval of the department.

§ 431. Licensure. 1. No place, person, association, corporation, institution or agency shall operate a day services program without first obtaining a permit issued therefor by the department, or otherwise than in accordance with the terms of such permit and with the regulations of the department.

2. The department shall promulgate regulations specifying the procedures for obtaining a permit required pursuant to this section and enumerating the documentation needed for such a permit. The regulations shall also include program standards which the department shall develop with the advice of the board of social welfare, the department of mental hygiene and the department of education. An application for a permit pursuant to this section shall include full information regarding the applicant's efforts to secure funding for its day services program. The department shall advise and otherwise assist the applicant in obtaining funds where such funds may be available under the provisions of this and any other law.

3. The department shall not issue a permit for the operation of a day services program which includes the provision of care, treatment or services requiring licensure or any other form of approval from or by another state agency or official, unless such license or approval has been obtained. There shall be such cooperative and coordinated arrangements between and among the department and the state departments of mental hygiene and education and other appropriate state departments and agencies as shall be necessary to assure that applications for required licenses or other forms of approval will be processed expeditiously.

4. Before any permit issued pursuant to this section is suspended or revoked, or when an application for such permit is denied, the applicant or holder of the permit shall be entitled, pursuant to the regulations of the department, to a hearing before the department. However, a permit may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the holder of the permit following a finding that the public health, or any individual's health, safety or welfare, is in imminent danger.

§ 432. State reimbursement; standards of payment. 1. (a) Expenditures made by social services officials for day services programs and their administration pursuant to the provisions of this title shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department as follows: there shall be paid to each social services district (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of allowable expenditures for day services and its administration, after first deducting therefrom any federal funds properly received or to be received on account thereof and the amount of any fees paid to the social services official for day services. The local government share of the cost of day services may be met in whole or in part by donated private funds, exclusive of in-kind services.

(b) For purposes of this title, expenditures for administration of day services shall include expenditures for compensation of employees in connection with the furnishing of day services, including but not limited to costs incurred for pensions,

federal old age and survivors insurance and health insurance for such employees, training programs for personnel, operation, maintenance and service costs; and such other expenditures as equipment costs, depreciation and charges and rental values as may be approved by the department. It shall not include expenditures for capital costs.

2. The department shall, after consultation with appropriate state agencies and with the approval of the the director of the budget, promulgate regulations establishing standards of payment for day services provided children with public financial support. Such standards of payment shall include the services required to be provided to the child and his family and the cost of such services. When the department has established such standards, reimbursement under this section shall be limited in accordance with such standards.

3. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

4. Payment of state reimbursement shall be made to local fiscal officers as in the case of state reimbursement for public assistance and care under other provisions of this chapter.

§ 433. Other state funding sources. 1. Prior to purchasing day services pursuant to section four hundred thirty, a social services official shall inquire of the department, and the department shall inform him, as to the available funding sources, if any, of which the day services facility was advised pursuant to subdivision two of section four hundred thirty-one. The social services official shall not purchase services from the day services facility until he has determined that the facility has cooperated with the department in efforts to obtain funding from all available sources.

2. No state agency or official with authority, pursuant to this or any other law, to provide financial assistance for care, treatment or services which may be included in a day services program shall deny or reduce such assistance on the ground that such assistance is available under this title.

§ 434. Funding limitations. Notwithstanding any other provisions of this chapter the total amount of reimbursement to social services districts pursuant to this title shall be limited to the amount of the annual appropriation made by the legislature for preventive services.

§ 2. This act shall take effect on the first day of April nineteen hundred seventy-seven and shall remain in full force and effect until the first day of April, nineteen hundred seventy-nine.

Prior to such effective date the commissioner of social services and the director of the state division of the budget shall jointly design and conduct an evaluation of existing day services programs and their funding sources and shall submit a report on their findings to the governor and legislature on or before January first, nineteen hundred seventy-seven.

Prior to April first, nineteen hundred seventy-nine, the commissioner of social services and the director of the state division of the budget shall jointly design and conduct and submit to the governor and the legislature, an evaluation of the day services programs funded pursuant to this act. Such evaluation shall assess the effectiveness of such programs including cost-effectiveness and the specific impact of such programs on the rate of growth of foster care caseloads.

The department of social services shall, prior to the effective date of this act, promulgate rules and regulations and take such other steps as may be necessary or appropriate to permit this act to become effective and operative on its effective date.

CHAPTER 878, LAWS OF 1976

STATE OF NEW YORK

S. 10730 A. 12108-A

SENATE-ASSEMBLY

March 30, 1976

IN SENATE—Introduced by Sens. MARINO, ANDERSON, HALPERIN, AUER, BARTOSIEWICZ, CALANDRA, CONKLIN, DONOVAN, DUNNE, ECKERT, FLYNN, GALIBER, GIUFFREDA, GORDON, GRIFFIN, HUDSON, JOHNSON, KNORR, LEVY, LEWIS, LOMBARDI, MARCHI, MASON, McFARLAND, OHRENSTEIN, PADAVAN, PATERSON, PISANI, PRESENT, ROLISON, SCHERMERHORN, W. T. SMITH, STAFFORD, TAURIELLO, TRUNZO, VOLKER, WARDER, Mrs. WINIKOW—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by Messrs. GOTTFRIED, HECHT—Multi-Sponsored by—Messrs. CONNOR, ZIMMER, M. J. MURPHY, HOYT, MARCHISELLI, Mrs. DIGGS, Mrs. LIPSCHUTZ, LENTOL, BARBARO, M. H. MILLER, DiFALCO, BIANCHI, FARRELL, FINK, FREY, HARENBERG, LEWIS, NICOLOSI, PESCE, ROSS, STAVISKY—read once and referred to the Committee on Child Care—reported and referred to Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT

to amend the family court act, the executive law, the education law, and the mental hygiene law, and repealing certain provisions thereof, in relation to juvenile justice reform

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Juvenile Justice Reform Act of 1976".

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 2. Section seven hundred eleven of the family court act is hereby amended to read as follows:

§ 711. Purpose. The purpose of this article is to provide a due process of law (a) for considering a claim that a person is a juvenile delinquent or a person in need of supervision and (b) devising an appropriate order of disposition for any person adjudged a juvenile delinquent or in need of supervision. *In any juvenile delinquency proceeding under this article, the court shall consider the needs and best interests of the respondent as well as the need for protection of the community.*

§ 3. Section seven hundred twelve of such act, subdivision (b) thereof having been amended by chapter nine hundred six of the laws of nineteen hundred seventy, is hereby amended to read as follows:

§ 712. [**"Juvenile delinquent" and "person in need of supervision".**] *Definitions. As used in this article, the following terms shall have the following meanings:*

(a) "Juvenile delinquent" [**means a**]. *A* person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime.

(b) "Person in need of supervision" [**means a**]. *A* male less than sixteen years of age and a female less than eighteen years of age who does not attend school in accord with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority.

(c) "Detention". The temporary care and maintenance away from their own homes of children held for or at the direction of the family court pending adjudication of alleged juvenile delinquency or need for supervision by such court or pending transfer to institutions or facilities to which committed or placed by such court or while awaiting disposition by such court after adjudication.

(d) "Secure detention facility". A facility characterized by physically restricting construction, hardware and procedures.

(e) "Non-secure detention facility". A facility characterized by the absence of physically restricitng construction, hardware and procedures.

(f) "Fact-finding hearing". In the case of a petition to determine delinquency, a hearing to determine whether the respondent did the act or acts alleged in the petition which, if done by an adult, would constitute a crime. In the case of a petition to determine need for supervision, "fact-finding hearing" means a hearing to determine

whether the respondent did the acts alleged to show that he violated a law or is incorrigible, ungovernable or habitually disobedient and beyond the control of his parents, guardian or legal custodian.

(g) "Dispositional hearing". In the case of a petition to determine delinquency, a hearing to determine whether the respondent requires supervision, treatment or confinement. In the case of a petition to determine need for supervision, "dispositional hearing" means a hearing to determine whether the respondent requires supervision or treatment.

(h) "Designated felony act". An act committed by a person fourteen or fifteen years of age which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (sodomy in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law; or (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree.

(i) "Designated class A felony act". A designated felony act defined in clause (i) of paragraph (h) of this section.

(j) "Secure facility". A facility in which a juvenile delinquent may be placed under this article, which is characterized by physically restricting construction, hardware and procedures, and is designated as a secure facility by the division for youth.

(k) "Restrictive placement". A placement pursuant to section seven hundred fifty-three-a.

§ 4. The opening paragraph of section seven hundred thirty-one of such act is hereby designated to be subdivision one, and such section is hereby amended by adding thereto a new subdivision, to be subdivision two, to read as follows:

2. If the petition alleges that the person committed a designated felony act, it shall so state, and the term "designated felony act petition" shall be prominently marked thereon. If all the allegations of a designated felony act are dismissed or withdrawn, the term "designated felony act petition" shall be stricken from the petition.

§ 5. Subdivision (a) of section seven hundred twenty of such act is hereby repealed and subdivisions (b) and (c) thereof are hereby redesignated to be subdivisions one and two.

§ 6. Paragraph (ii) of subdivision (a) of section seven hundred thirty-four of such act, as amended by chapter eight hundred thirty-six of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

(ii) attempt to adjust suitable cases before a petition is filed over which the court apparently would have jurisdiction; provided, however, that no cases in which the potential respondent is accused of having done [an act which if done by an adult would constitute a class A or B felony or assault in the first degree,] a *designated felony act* may be adjusted without the prior written approval of [the appropriate local director of probation] a *judge of the court*.

§ 7. Section seven hundred forty-two of such act is hereby **repealed**.

§ 8. Section seven hundred forty-three of such act is hereby **repealed**.

§ 9. Such act is hereby amended by adding thereto two new sections, to be sections seven hundred forty-two and seven hundred forty-three, to read as follows:

§ 742. Judge to preside in juvenile delinquency proceedings. In any juvenile delinquency proceeding under this article, the judge who presides at the commencement of the fact-finding hearing shall continue to preside at the fact-finding hearing or any adjournment thereof, and at any other subsequent hearing in the proceeding. However, where the judge cannot preside

(i) by reason of illness, disability, vacation, or no longer being a judge of the court, or is removed from the proceeding by reason of bias, prejudice or similar grounds; or

(ii) in cases heard outside the city of New York, if it is not practicable for the judge to preside; the rules of the family court shall provide for the assignment of the proceeding to another judge of the court.

§ 743. Appearances at juvenile delinquency dispositional hearings. In any juvenile delinquency proceeding under this article, the counsel presenting the petition shall have prior written notice of all dispositional hearings, and shall have the opportunity to participate therein, including but not limited to the right to present evidence of available resources and to be heard regarding the availability and advisability of each disposition provided for by law.

§ 10. Subdivision (b) of section seven hundred forty-six of such act is hereby **repealed**.

§ 11. Section seven hundred forty-eight of such act is hereby amended by adding thereto a new subdivision, to be subdivision (c), to read as follows:

(c) Where the petition alleges that the respondent committed a designated felony act the court shall state on the record the reason for any adjournment of the fact-finding hearing.

§ 12. Section seven hundred forty-nine of such act is hereby amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

(d) Where the respondent is found to have committed a designated felony act:

(i) the court shall not order an adjournment in contemplation of dismissal under this section;

(ii) an adjournment under subdivision (b) of this section may be for a period of up to thirty days if the respondent is detained, and no additional adjournments may be granted in the absence of special circumstances.

§ 13. Part four of article seven of such act is hereby amended by adding thereto a new section, to be section seven hundred fifty, to read as follows:

§ 750. Probation reports; probation investigation and diagnostic assessment. 1. All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the making of an order pursuant to section seven hundred fifty-two, and may be used in a dispositional hearing and only therein.

2. After an order has been made pursuant to section seven hundred fifty-two and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination by the child's law guardian or counsel or by the respondent if he is not represented by a law guardian or other counsel. Except as provided in subdivision four, in its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review or appeal in any review or appeal from the order of disposition. If such reports or memoranda are made available to respondent or his law guardian or counsel, they shall also be made available to the counsel presenting the petition. Facts or opinions derived from such reports or memoranda may be utilized only in the course of a dispositional hearing.

3. Following a determination that a respondent has committed a designated felony act and prior to the initial dispositional hearing, the judge shall order a probation investigation and diagnostic assessment. The probation investigation shall include, but

not be limited to, the history of the juvenile including previous conduct, the family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies and the response of the juvenile to such assistance. The diagnostic assessment shall include, but not be limited to, psychological tests and psychiatric interviews to determine mental capacity and achievement, emotional stability and mental disabilities. It shall include a clinical assessment of the nature and intensity of impulses and controls of the juvenile, and of the situational factors that may have contributed to the act or acts. When feasible, expert opinion shall be rendered as to the risk presented by the juvenile to others or himself, with a recommendation as to the need for a restrictive placement.

4. Where the respondent is found to have committed a designated felony act, all diagnostic assessments and probation investigation reports shall be made available to the court and counsel presenting the petition and for the respondent at least five court days prior to the commencement of the dispositional hearing. The respective attorneys shall also have the right to examine the makers of all such materials. They shall also have the right to an adjournment for a reasonable time in order to produce additional evidence, including expert testimony.

§ 14. Section seven hundred fifty-two of such act is hereby amended to read as follows:

§ 752. **[**Finding.**]** *Findings.* If the allegations of a petition under this article are established in accord with part three, the court shall enter an order finding that the respondent is a juvenile delinquent or a person in need of supervision **[**and**]**. *The order* shall state the grounds for the finding *and the facts upon which it is based. In the case of a finding that the respondent is a juvenile delinquent, the order shall specify the section or sections of the penal law or other law under which the act or acts so stated would constitute a crime if done by an adult. If the respondent is found to have committed a designated felony act, the order shall so state.*

§ 15. The unnumbered paragraph of section seven hundred fifty-three of such act is hereby designated to be subdivision one, paragraph (d) of such subdivision is hereby **repealed**; such subdivision is hereby amended by adding thereto a new paragraph, to be paragraph (d), and such section is hereby amended by adding thereto a new subdivision, to be subdivision two, to read, respectively, as follows:

(d) Continuing the proceeding and placing the respondent under a restrictive placement in accord with section seven hundred fifty-three-a of this article; or

2. The order shall state the court's reasons for the particular disposition, including, in the case of a restrictive placement pursuant to section seven hundred fifty-three-a, the specific findings of fact required in such section.

§ 16. Section seven hundred fifty-three-a of such act is hereby renumbered to be section seven hundred fifty-three-b, and a new section, to be section seven hundred fifty-three-a, is hereby inserted therein, to read as follows:

§ 753-a. Designated felony acts; restrictive placement. 1. Where the respondent is found to have committed a designated felony act, the order of disposition shall be made within twenty days of the conclusion of the dispositional hearing and shall include a finding, based on a preponderance of the evidence, as to whether, for the purposes of this article, the respondent does or does not require a restrictive placement under this section, in connection with which the court shall make specific written findings of fact as to each of the elements set forth in paragraphs (a) through (d) in subdivision two of this section as related to the particular respondent. If the court finds that a restrictive placement under this section is not required, the order of disposition shall be as provided in section seven hundred fifty-three, not including subdivision (e). If the court finds that a restrictive placement is required, it shall continue the proceeding and enter an order of disposition for a restrictive placement. Every order under this section shall be a dispositional order, shall be made after a dispositional hearing and shall state the grounds for the order.

2. In determining whether a restrictive placement is required, the court shall consider:

(a) the needs and best interests of the respondent;

(b) the record and background of the respondent, including but not limited to the information disclosed in the probation investigation and diagnostic assessment;

(c) the nature and circumstances of the offense, including whether any injury involved was inflicted by the respondent or another participant; and

(d) the need for protection of the community.

3. When the order is for a restrictive placement in the case of a youth found to have committed a designated class A felony act,

(a) the order shall provide:

(i) The respondent shall be placed with the division for youth for an initial period of five years.

(ii) During the first twelve months of the placement, the respondent shall be confined in a secure facility.

(iii) During the second period of twelve months of placement, the respondent shall be placed in a residential facility.

(iv) The respondent may not be released from a secure facility or transferred to a non-secure facility during the period provided in clause (ii) of this paragraph, nor

may the respondent be released from a residential facility during the period provided in clause (iii) of this paragraph.

(b) Notwithstanding any other provision of law, during the first twelve months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to part six of this article; provided, however, that during such period a motion to vacate the order may be made pursuant to section seven hundred sixty-two of this act, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) After the expiration of the period provided in clause three of paragraph (a) of this subdivision, the respondent shall not be released from a residential facility without the written approval of the director of the division for youth or his or her designated deputy director.

(ii) The respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) The respondent shall not be discharged from the custody of the division for youth, unless a motion therefor under part six of this article is granted by the court, which motion shall not be made prior to the expiration of three years of the placement.

(iv) Unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended, on a motion of any party, the division for youth or the court, after a dispositional hearing, for an additional period of twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section seven hundred sixty.

4. When the order is for a restrictive placement in the case of a youth found to have committed a designated felony act, other than a designated class A felony act,

(a) the order shall provide:

(i) The respondent shall be placed with the division for youth for an initial period of three years.

(ii) The respondent shall initially be confined in a secure facility for a period set by the order, to be not less than six nor more than twelve months.

(iii) After the period set under clause (ii) of this paragraph, the respondent shall be placed in a residential facility for a period set by the order, to be not less than six nor more than twelve months.

(iv) The respondent may not be released from a secure facility or transferred to a non-secure facility during the period provided by the court pursuant to clause (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided by the court pursuant to clause (iii) of this paragraph.

(b) Notwithstanding any other provision of law, during the first six months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to part six of this article; provided, however, that during such period a motion to vacate the order may be made pursuant to section seven hundred sixty-two of this act, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) After the expiration of the period provided in clause (iii) of paragraph (a) of this subdivision, the respondent shall not be released from a residential facility without the written approval of the director of the division for youth or his or her designated deputy director.

(ii) The respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) The respondent shall not be discharged from the custody of the division for youth.

(iv) Unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement or any extension thereof, the placement may be extended, on motion of any party, the division for youth or the court, after a dispositional hearing, for an additional period of twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section seven hundred sixty.

§ 17. The unnumbered paragraph of section seven hundred fifty-four of such act is hereby designated to be subdivision one, and such section is hereby further amended by adding thereto a new subdivision, to be subdivision two, to read as follows:

2. The order shall state the court's reasons for the particular disposition.

§ 18. Section seven hundred fifty-eight of such act is hereby **repealed**.

§ 19. Subdivisions (a), (b) and (c) of section seven hundred sixty of such act are hereby redesignated to be subdivisions one, three and four, respectively, and

such section is hereby amended by adding thereto a new subdivision, to be subdivision two, to read as follows:

2. (a) Where the order of disposition is for a restrictive placement under section seven hundred fifty-three-a of this article, if the court at the dispositional hearing finds that the respondent has a mental illness, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or others, the court may, as part of the order of disposition, direct the temporary transfer, for a period of up to one year, of the respondent to the custody of the commissioner of mental hygiene who shall arrange for the admission of the respondent to an appropriate facility of the department of mental hygiene within thirty days of such order. The director of the facility so designated by the commissioner shall accept such respondent for admission.

(b) Persons transferred to the department of mental hygiene, pursuant to this subdivision, shall be retained by the department of mental hygiene for care and treatment for the period designated by the court. At any time prior to the expiration of such period, if the clinical director of the facility determines that the child is no longer mentally ill, the department shall make application to the family court for an order transferring the child back to the division for youth. Not more than thirty days before the expiration of such period, there shall be a dispositional hearing, at which time the court may:

(i) extend the temporary transfer of the respondent for an additional period of up to one year to the custody of the commissioner of the department of mental hygiene pursuant to this subdivision; or

(ii) continue the restrictive placement of the respondent in the custody of the division for youth.

(c) During such temporary transfer, the respondent shall continue to be under restrictive placement with the division for youth. Whenever the respondent is transferred back to the division, the conditions of the placement as set forth in section seven hundred fifty-three-a of this article shall apply. Time spent by the respondent in the custody of the commissioner of the department of mental hygiene shall be credited and applied towards the period of secure and residential placement as the case may be.

§ 20. Section seven hundred sixty-four of such act is hereby amended to read as follows:

§ 764. Petition to terminate placement or commitment. Any parent or guardian or duly authorized agency or next friend of a person placed under [section] *sections seven hundred fifty-three-a or* seven hundred fifty-six or committed

under section seven hundred fifty-eight may petition to the court for an order terminating the placement or commitment. The petition must be verified and must show:

(a) *except in the case of a person placed pursuant to section seven hundred fifty-three-a,* that an application for release of the respondent was made to the duly authorized agency with which the child was placed or to the institution to which the respondent was committed;

(b) *except in the case of a person placed pursuant to section seven hundred fifty-three-a,* that the application was denied or was not granted within thirty days from the day application was made; and

(c) the grounds for the petition.

§ 21. Such act is hereby amended by adding thereto a new section, to be section seven hundred eighty-two-a, to read as follows:

§ 782-a. Transfer of records and information to institutions and agencies. Whenever a person is committed to the care and custody of or placed with an institution suitable for the commitment or placement of a person adjudicated delinquent or in need of supervision maintained by the state or any subdivision thereof or to an authorized agency including the division for youth, the family court so committing or placing such person shall forthwith transmit a copy of the orders of the family court pursuant to section seven hundred fifty-two and either seven hundred fifty-three, seven hundred fifty-three-a or seven hundred fifty-four of this article, and of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such child, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records with respect to such person to such institution or agency, notwithstanding any contrary provision of law.

§ 22. Section two hundred fifty-four of such act is hereby amended by adding thereto a new subdivision, to be subdivision (c), to read as follows:

(c) The county attorney and the district attorney of a county, and the corporation counsel of the city of New York and the district attorney of any county in the city, may enter into an agreement providing for the temporary assignment of assistant district attorneys to such county attorney or corporation counsel for the purpose of presenting the petition in juvenile delinquency proceedings in such county in which a designated felony act has been alleged. While so assigned, such assistant district attorneys shall act as assistant county attorneys or assistant corporation counsels as the case may be, but shall continue to be employees of the district attorney. Such

agreement shall be subject to the approval in the city of New York of its mayor, and outside the city of the respective county executive, if there be one, otherwise, the board of supervisors.

§ 23. Paragraph (a) of subdivision one of section five hundred two of the executive law, as amended by chapter two hundred ninety-two of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

(a) Youth centers shall consist of such camps, residences or other buildings as the division shall from time to time establish and operate, or with respect to which the division may from time to time contract for the operation, for the care, treatment, education, rehabilitation and guidance of youths who have reached the age of seven years but have not reached the age of eighteen years, *or twenty-one years in the case of a youth placed pursuant to section seven hundred fifty-three-a of the family court act,* and whose behavior indicates they will benefit from the programs offered at such centers. The programs of said centers may include, but need not be limited to, training and service in conservation, civil defense, disaster relief and other similar projects under appropriate supervision.

§ 24. Such law is hereby amended by adding thereto a new section, to be section five hundred fifteen-a, to read as follows:

§ 515-a. Secure facilities. 1. As used in this article, "secure facility" means a facility in which a juvenile delinquent may be placed under this article, which is characterized by physically restricting construction, hardware and procedures, and is designated as a secure facility by the division under this section.

2. Secure facilities shall provide appropriate services to the residents, including but not limited to: residential care, educational and vocational training, physical and mental health services, and employment counseling.

3. A youth shall be placed in or transferred to a secure facility only:

(a) by order of the family court; or

(b) after a hearing pursuant to regulations of the division, with the written approval of the director of the division or his or her designee.

4. The division shall promulgate regulations, not inconsistent with the rules of the board of social welfare, governing secure facilities of the division, including but not limited to:

(a) limitations as to capacity;

(b) services to be provided and conditions to be maintained;

(c) a grievance procedure for residents to be run by the division, with the use of personnel separate from that of the facility;

(d) procedures for admission to and release or transfer from the facility;

(e) periodic inspection by the division, not to be conducted by personnel of the facility.

§ 25. Section five hundred sixteen of such law is hereby **repealed**, and such law is hereby amended by adding thereto a new section, to be section five hundred sixteen, to read as follows:

§ 516. Restrictive placements. 1. The division shall promulgate regulations governing restrictive placements of juveniles under section seven hundred fifty-three-a of the family court act, not inconsistent with such act and the rules of the board of social welfare.

2. The regulations shall establish within the division a restrictive placement committee. The division shall make and revise as needed a plan for the care, treatment, services and supervision of each youth under restrictive placement, which plan shall be reviewed and may be revised by the committee. The youth may not be released or transferred from a facility without the approval of the committee, except by written order of the director.

3. For youths placed with the division pursuant to a restrictive placement under section seven hundred fifty-three-a of the family court act, the division shall (a) report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent, unless otherwise provided in the order of disposition; and

(b) provide intensive supervision of the youth whenever he or she is not in a secure or residential facility of the division.

§ 26. Subdivision two of section five hundred nineteen of such law, as added by chapter nine hundred forty-seven of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

2. The family court shall immediately notify the division of the placement of any child therewith. [The family court shall also issue an order of adjudication and disposition which shall recite the facts upon which it is based. This order] *The orders of the family court pursuant to section seven hundred fifty-two and either seven hundred fifty-three, seven hundred fifty-three-a or seven hundred fifty-four of the family court act and copies of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such child, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records,* shall be delivered *together with the child or earlier* to a person authorized by the division to receive the child [together with the child and shall constitute the only paper requisite to a placement with the division] *notwithstanding any contrary provision of law.*

§ 27. Section five hundred twenty-three of such law is hereby amended by adding thereto a new subdivision, to be subdivision four, to read as follows:

4. No child placed with the division pursuant to a restrictive placement under the family court act shall be released from a secure or residential facility except pursuant to section seven hundred fifty-three-a of the family court act.

§ 28. Section five hundred twenty-five of such law is hereby amended by adding thereto a new subdivision, to be subdivision three, to read as follows:

3. No child placed with the division pursuant to a restrictive placement under the fajily court act shall be discharged except pursuant to section seven hundred fifty-three-a of the family court act.

§ 29. The education law is hereby amended by adding thereto a new section, to be section one hundred twelve, to read as follows:

§ 112. Cooperation with the division for youth. The education department shall cooperate with the division for youth with respect to educational and vocational training programs for children placed with the division for youth.

§ 30. Section 7.05 of the mental hygiene law is hereby amended by adding thereto a new subdivision, to be subdivision (e), to read as follows:

(e) The department and all directors, officers and employees of mental hygiene facilities shall cooperate with the division for youth with respect to such mental health services as are necessary to insure professional mental health treatment for all children placed with the division for youth.

§ 31. The director of the division for youth shall, with the cooperation of the commissioners of the departments of mental hygiene and education and the director of the division of probation, prepare a master plan for the implementation of sections five hundred fifteen-a and five hundred sixteen of the executive law, as added by this act, and shall present such plant to the governor, the speaker of the assembly, and the temporary president of the senate on or before the first day of January, nineteen hundred seventy-seven.

§ 32. If any court of competent jurisdiction shall find any provision of this act or application thereof to be invalid, such findings shall not invalidate any other provision or application.

§ 33. This act shall take effect on the first day of February after it shall have become a law, except that sections one, two, twenty-nine, thirty and thirty-one shall take effect immediately, and this act shall only apply to acts committed on or after the effective date of this act. Notwithstanding the foregoing, this act shall take effect immediately for the purpose of preparation and promulgation of rules and making other preparations.

REPEAL NOTE.—The family court act, section seven hundred twenty, subdivision (a), and sections seven hundred forty-two and seven hundred forty-three, to be repealed by this act, define "detention," "secure detention facility," "non-secure detention facility," "fact-finding hearing" and "dispositional hearing" in substantially the same terms as enacted by section two of this act. Subdivision (b) of section seven hundred forty-six of the family court act, to be repealed by this act, provides for preparation and use of probation reports. Paragraph (d) of subdivision one of section seven hundred fifty-three and section seven hundred fifty-eight of the family court act, to be repealed by this act, relate to commitment of juvenile delinquents. Section five hundred sixteen of the executive law, to be repealed by this act, relates to transfer of division for youth residents.

APPENDIX III

RESOLUTION ON THE PASSING OF SHAD POLIER

THE TEMPORARY STATE COMMISSION
ON CHILD WELFARE

SENATOR JOSEPH R. PISANI
Chairman

WHEREAS, SHAD POLIER'S EFFORTS ON BEHALF OF THE CHILDREN OF THIS STATE LED TO THE ENACTMENT OF NUMEROUS STATUTES IMPROVING THE LAWS GOVERNING FOSTER CARE, ADOPTION AND CHILD PROTECTION AND ESTABLISHING THE RIGHTS AND BEST INTERESTS OF CHILDREN AS VIABLE LEGAL CONCEPTS; AND

WHEREAS, MR. POLIER CONTRIBUTED GENEROUSLY OF HIS TIME AND LABOR IN ASSISTING THE TEMPORARY STATE COMMISSION ON CHILD WELFARE IN ITS STUDIES AND PROPOSALS TO IMPROVE THE CHILD WELFARE SYSTEM OF THIS STATE; AND

WHEREAS, SHAD POLIER'S DEVOTION AND LIFE-LONG SERVICE TO HUMANITARIAN IDEALS HAVE CREATED A BENEFICIAL LEGACY FOR THE CHILDREN OF THIS STATE AND FOR THE VICTIMS OF PREJUDICE AND OPPRESSION; AND

WHEREAS, THE MEMBERS AND STAFF OF THE TEMPORARY STATE COMMISSION ON CHILD WELFARE MOURN THE PASSING OF A DEAR FRIEND AND WISE COUNSELOR; NOW, THEREFORE, BE IT

RESOLVED, THAT THE TEMPORARY STATE COMMISSION ON CHILD WELFARE EXPRESS ITS SINCERE AND HEARTFELT CONDOLENCES AND AFFECTION TO SHAD POLIER'S DISTINGUISHED WIDOW, JUDGE JUSTINE WISE POLIER, AND TO THEIR CHILDREN.

APPENDIX IV

RESOLUTION ON DEINSTITUTIONALIZATION OF PINS

THE TEMPORARY STATE COMMISSION
ON CHILD WELFARE

SENATOR JOSEPH R. PISANI
Chairman

WHEREAS, the category of PINS ("persons in need of supervision") was created by the Legislature in 1962 in order to avoid unnecessary stigmatization of children and, at the same time, to permit the Family Court to use appropriate resources in dealing with troubled and troublesome children; and

WHEREAS, the original concept of the Family Court Act for the placement of PINS was limited to placement with authorized social agencies for treatment and rehabilitation and did not include confinement in reformatories or institutions of similar character; and

WHEREAS, the Legislature in 1963, in response to the then existing lack of adequate and appropriate voluntary facilities for the care of PINS, amended the Family Court Act to permit placement of PINS in State training schools; and

WHEREAS, such authority for the placement of PINS in State training schools was reaffirmed annually by the Legislature until 1968 when such authority was made permanent due to the continued shortage of appropriate voluntary facilities; and

WHEREAS, such legislative authorization for the placement of PINS in State training schools was motivated by a desire to afford the Family Court an additional means for providing PINS with requisite treatment opportunities; and

WHEREAS, recent Federal and State court decisions have upheld the right of PINS to treatment upon Due Process and other constitutional grounds, and conversely proscribe confinement without appropriate treatment opportunities; and

WHEREAS, PINS would be well-served with community based assistance or day treatment, or in group homes, foster family homes, or residential treatment facilities; and

WHEREAS, the State Division for Youth is now placing greater emphasis on the deinstitutionalization of youth through the development of rehabilitative treatment alternatives to training schools, which also operate at substantially lower per capita costs; and

WHEREAS, the State Division for Youth has initiated plans for the development and expansion of urban homes, youth camps and START and youth development centers; and

WHEREAS, voluntary agencies of the State have manifested a willingness to cooperate in accepting a greater number of PINS consistant with the availability of funds therefor; and

WHEREAS, the continued placement of PINS in State training schools would jeopardize the State's ability to receive substantial Federal funds pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974; now, therefore, be it

RESOLVED, that the Temporary State Commission on Child Welfare strongly urges the Senate and Assembly of the State of New York to pass legislation to prohibit the placement of PINS in State training schools as now constituted, provided that adequate funds are made available for the creation and development of a full range of alternative resources including residential facilities sufficiently staffed to provide intensive supervision and treatment for those youths adjudicated PINS whose behavior and condition have shown that they represent a substantial risk of harm to themselves or others and thereby require a period of treatment and supervision in a structured setting.

RESOLVED, that copies of this Resolution be transmitted to the Temporary President of the Senate and the Speaker of the Assembly.